The Solicitors' Journal

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CURRENT TOPICS

Taxation of Self-employed Persons

A SPEECH by the President of the Institute of Chartered Accountants on 6th March, 1953, raised a matter of vital moment to solicitors, as well as to other professional and self-employed persons. He said that the self-employed person, including those who are in partnership, is at a major disadvantage in regard to his ability to provide for his retirement as compared with many salaried executive directors of comparable standing employed by companies. Companies are permitted, through the medium of pension schemes—the companies' contributions to which are allowed to be treated as expenses deductible in full for taxation purposes—to provide generous pensions for such persons who are in their employ. The contributions by the employees themselves are also allowed in full as deductions from their incomes in assessing them to income tax and sur-tax. The self-employed person, on the other hand, can make no similar arrangements for tax relief on either his business profits or his personal income. Companies are permitted to build up reserves out of any profits which are left after meeting income tax, profits tax and excess profits levy. But the self-employed trader is liable to sur-tax on every penny of his trading profits, whether drawn out of the business or not. His chances of saving and of reinvesting his profits in his business are thus more restricted than those of most companies. It cannot be right, he said, that men who have served or are serving the community well should be subjected always to gnawing anxieties as to their old age and as to the fate of their dependants when the time comes for them to work no more. The correction of this inequity is long overdue and it is high time that something was done to give the self-employed person a chance. He appealed to the Tucker Committee to devise, and persuade the Chancellor of the Exchequer to accept, a scheme which will substitute justice for inequity. We strongly support that appeal. As *The Times* of 7th March observed in a leader: "It would be a poorer world if everybody were a salaried employee."

The Late Mr. R. T. Watkin Williams

THOSE who practise in the Chancery Division are well acquainted with the fact that, unlike the Queen's Bench Division, it is assisted by masters who are so qualified by being admitted to the Roll of Solicitors. The older practitioners will remember the late Master ROBERT THESIGER WATKIN WILLIAMS, a Chancery Master from 1900 to 1932, who died on 4th March at the age of 86. Admitted as a solicitor in 1889, at the time of his appointment in 1910 he was head of the firm of Watkin Williams, Steel and Hart. He was the eldest son of Mr. Justice Watkin Williams, who attained eminence as a commercial lawyer. Highly efficient and courteous as a master, and genial and warm-hearted privately, he was missed when he retired, and all who knew him will mourn his loss.

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New Stock Exchange Issues: Per Pro Applications

THE difficulty sometimes experienced by solicitors in obtaining clients' signatures in time for applications to be made for new stock exchange issues has been the subject of representations by the Council of The Law Society to the clearing banks through the Stock Exchange. With regard to the question of allowing solicitors to sign application forms as agents, the March issue of the *Law Society's Gazette* quotes the clearing banks as stating that it is impossible to lay down hard and fast rules. They add that the banks are usually prepared, in the case of solicitors and other agents of standing, to accept application forms completed by such persons as agents for applicants on the basis (1) that this is only done where "the time factor intervenes," (2) that in the case of joint accounts as many of the applicants' signatures as possible be obtained, (3) that the responsibility of third party signatures must rest entirely with the agent submitting the application, and (4) that the agent attaches a letter to the application form, giving reasons for the letter being so signed and undertaking in appropriate cases to obtain the written confirmation of the principal. Separate forms in respect of the same application would, the clearing banks hold, lead to confusion and duplication. Solicitors should obtain as many direct signatures as they can and obtain written permission of their principals in the meantime with regard to the remainder. The application form when lodged should be accompanied by a letter explaining the circumstances and enclosing the letters of confirmation or an undertaking to obtain them.

Justices of the Peace Act, 1949

THE purpose of Circular No. 45/1953, issued by the Home Office on 25th February, is to bring to the attention of magistrates' courts committees the urgent need for economy in expenditure, consistent with the efficient administration of justice in magistrates' courts. A circular will shortly be sent to the local authorities indicating the categories of expenditure which must be referred to the Home Office if the expenditure is to be approved for the purposes of s. 27 of the Justices of the Peace Act, 1949, but in the meantime the Secretary of State, having consulted the Central Council of Magistrates' Courts Committees, thinks it desirable to bring the need for economy to the notice of magistrates' courts committees without delay, since it may affect their plans for measures to take effect from 1st April, 1953. The Secretary of State recognises that some increase in expenditure must follow the bringing into force of some provisions of the Act, including the extension of superannuation to additional classes of clerks to justices and assistants to clerks and the introduction of travelling and lodging allowances for justices; but it is important, in the present economic and financial situation of the country, that any increase should be limited as closely as possible. He therefore asks that the committees will keep constantly in mind the need to maintain strict economy. The circular which is to be sent to the local authorities will inform them that, in addition to expenditure on building work, expenditure (*a*) on the purchase or rental of buildings, except where a rental is continued at an existing level, (*b*) on furniture and equipment, except by way of replacement, and (*c*) on the salary of any member of the staff of a clerk to justices, if the post is a new one, must be referred to the Home Office for approval, if it is to rank for repayment.

The Locum Tenens

SOLICITORS who are willing to undertake to give temporary assistance to solicitors who are unable to carry on their sole practice owing to illness are invited in the March issue of the *Law Society's Gazette* to notify the Secretary of The Law Society, giving particulars of the branches of the law in which they have had experience, the area or areas to which they would be willing to go and the remuneration they would require. There are times when a solicitor is unable to obtain sufficient assistance in time, owing to distance from his colleagues or the fact that his colleagues are already heavily overburdened, or both. The initiative taken by the Council is to be welcomed, and should receive a ready response.

LEGAL AID: SOME REFLECTIONS ON THE FIRST EIGHTEEN MONTHS

THE appearance of the second annual report of The Law Society on the operation of the Legal Aid and Advice Act and of the comments and recommendations of the Advisory Committee* suggests that the time may have come to attempt an interim assessment of the working of the scheme. It can be no more than a provisional assessment, for the scheme has been in operation for only eighteen months and, as The Law Society point out, it will not be possible to draw firm conclusions until cases are being closed at the same rate as new aid certificates are being granted, which is far from being the case at present.

Both The Law Society and the Advisory Committee conclude that, on the whole, the scheme is working remarkably well and economically, and it is believed that this view will be shared by the profession and—what is perhaps more important—by the public. But certain deficiencies and anomalies have appeared.

The first of these, from which, indeed, most of the others flow, is that rather less than half the Act is in operation and that, in particular, the Legal Advice Scheme has still not been brought into force. The deferment of this part of the scheme in the interests of economy has been severely criticised on many occasions and notably by both The Law Society and the Advisory Committee in the first annual report. In the second report these criticisms are repeated in yet more outspoken terms; indeed, the comments of the Advisory Committee are quite exceptionally blunt. They point out that if cheese-paring economy is carried too far the money still spent ceases to make an economic return and that this situation has, in their view, been reached under the Legal Aid Scheme. While the ordinary client gets advice first and takes proceedings only as a last resort, under the Government scheme it is precisely the other way round; "money is only available for the expensive 'surgical operation' of litigation and none is spent on the cheaper 'preventive medicine' of legal advice." The applicant has to ask for aid in litigation if he is to get his wrongs righted, and expensive proceedings are started when with a little advice the quarrel might have been settled amicably. Further, certifying committees are faced with grave difficulties when applications are prepared without legal help; if the advice centres could act as a filter many applications would end there and those that reached the certifying committees would show the

* H.M.S.O., price 1s. 9d.

merits far more accurately. The Legal Aid Scheme now in operation requires a large administrative machine which could probably administer the Advice Scheme with little extra cost. The gross cost is estimated at under £500,000 per annum (a grain in the sands of total Governmental expenditure) and the net overall cost would be far less. Meanwhile the voluntary poor man's lawyer centres are either dying from lack of funds or living from hand to mouth not guided by any central policy. And the committee ends by making only one substantive recommendation—to reconsider the decision to defer this part of the scheme. "It is as much a denial of justice to conceal the knowledge of their rights from the poor as it was to fail to give them the means of enforcing them. The Legal Aid Scheme has removed one defect in British justice. The Legal Advice Scheme, for a cost, which . . . would not be large, can and should remove another." This is a devastating indictment of inactivity by two administrations which seem to have been imbued with the notion that if they saved a potentially well-spent penny they could continue to squander the pounds.

There is little doubt that it is the continued absence of arrangements for legal advice which has led to certain cases in which civil aid certificates have been granted when they clearly should have been refused. Such cases have admittedly been commendably rare—far rarer than often ill-informed criticism would suggest—but they certainly have occurred. Under present circumstances they are inevitable. Certifying committees are called upon to decide whether the applicant has a reasonable case on the basis of a written application, often completed by a semi-illiterate without any competent advice and, when the applicant is the plaintiff, without having any idea of the nature of the defence. It is small wonder that they sometimes err or are deceived. Nevertheless, statistics show that aided litigants have been successful in a remarkably high proportion of concluded cases; the percentage ranges from just over 50 per cent. in appeals to 94 per cent. in divorce cases and, even if divorces are excluded, the average figure is 68 per cent. The Advisory Committee very justly conclude that "this is a highly satisfactory achievement and one which many firms of solicitors may well envy." The least satisfactory feature is the relative lack of success in appeals, where the percentage is apparently falling to something like the overall average of successful civil appeals (33 per cent.). The Advisory Committee were rightly impressed by the argument of the Master of the Rolls that the test of reasonableness should be applied more strictly in appellate than in original proceedings, having regard to the consequences to the unaided respondent. In the experience of the present writer, committees do in fact work on this principle and, as the Advisory Committee recommend, generally want to see counsel's opinion and a shorthand note of the judgment. The difficulty, perhaps, is that after fighting the case in the court of first instance counsel tend to be less aloof and objective than when first introduced to the case. Moreover, it is easy to be wise after the event. When the Court of Appeal have dismissed an appeal they may well take the view that it should never have been brought, but a certifying committee, which will not have had the advantage of argument on both sides, may equally reasonably have taken the opposite view—and, who knows, they might be proved right if the case could be taken to the House of Lords.

In the small minority of cases in which judges decided that a certificate should never have been granted, some of them have expressed their displeasure by refusing to order taxation, thus depriving the unfortunate lawyers of any means of recovering costs. It seemed that this practice had been stopped by two decisions in the Court of Appeal to the effect that the judge had no discretion in the matter but must make an order for taxation, since s. 6 (5) of the Act gives solicitors a right to be paid (*Brown* v. *Brown* [1952] 1 T.L.R. 930, *Page* v. *Page* and *Metcalfe* v. *Wells* [1953] 2 W.L.R. 432, *ante*, p. 150). However, in a still more recent case (*Bennett* v. *Wilson*, *The Times*, 28th February, 1953) Lynskey, J., apparently decided that he was still entitled to take this drastic step in a case where the solicitors had failed to carry out their legal obligation to file the civil aid certificate with the pleadings. In the absence of a full report it is impossible to tell how his lordship reconciled this ruling with that of the Court of Appeal, if indeed the earlier decisions were drawn to his attention. It is submitted, however, that judicial action of this sort is not the appropriate sanction. Even if the lawyers, rather than the lay client or the certifying committee, have been at fault, discipline is intended to be maintained by the professional bodies after full inquiry and not by fines imposed from the Bench on solicitors who have no right of audience even in their own defence. Moreover, as the Master of the Rolls pointed out in *Page* v. *Page* and *Metcalfe* v. *Wells*, such action leads directly to further anomalies, since an appeal against the judge's order requires the litigant to obtain a new certificate to pursue an appeal in which he has no pecuniary interest whatsoever. Despite this absence of interest he was, in *Metcalfe* v. *Wells*, required to make a contribution.

It is worth looking at the facts of *Bennett* v. *Wilson*, for they illustrate very clearly the type of difficulty with which certifying committees are faced. The plaintiff had suffered severe injuries as a result of a scrap between her spaniel and the defendant's alsatian. Her story certainly disclosed a possible case of negligence against the defendant and, although the judge did not accept her evidence, no criticism could be levelled against the certifying committee for having done so in the absence of any knowledge of the defendant's case. Both parties obtained legal aid, both their contributions being assessed at nil and, in reply to his lordship's question, the plaintiff's counsel conceded that his client would have recovered nothing, even if successful, unless the defendant's position subsequently improved, "possibly by winning a football pool." It should, perhaps, be pointed out that the mere fact that the defendant's contribution is nil does not prove that no damages could be recovered from him; many assets (e.g., his dwelling-house and furniture) are excluded from an assessment but may be liable to execution. It is not, therefore, necessarily right to assume that, in his lordship's words, "If there had been no such thing as legal aid, these proceedings would never have come to this court," although that assumption may have been justified in the present case. Nor is it easy to see how, as the learned judge suggested, a system could be evolved whereby committees would know whether there was any practical use in issuing a certificate. Committees can, and do, refuse a certificate if they think it unreasonable to grant it, but they can hardly be expected to investigate the means of the other party—a subject on which they will normally have no information. The most that could be done (and the present writer believes that this would be worthy of experiment) is to inform the defendant that the other party has applied for a certificate to take proceedings against him and to invite him to submit any representations he may wish to make. The objection made to this is that it might result in a pre-trial of the issues by the certifying committee. But this, surely, is unsound. The role of the committee is, in fact, similar to that of examining magistrates seeking to decide whether there is a *prima facie* case. There the accused can, if he

wishes, call evidence, and it is never suggested that this pre-judges the case—though it may be bad tactics for the accused to take advantage of this opportunity to reveal his defence. Having regard to the adverse consequences as regards costs, a defendant (especially if not himself eligible for civil aid) is liable to be severely prejudiced by a grant of a certificate to his adversary. Why should he not be allowed to object to its being granted? Certainly it would materially aid the committee if they heard both sides and it would undoubtedly reduce the number of cases in which aid is wrongly granted. But it is doubtful whether it would reveal to the committee the extent of the defendant's means.

It is submitted that, in reality, *Bennett* v. *Wilson* is an admirable illustration of the need for the Legal Advice Scheme. Had this been in operation the advice centres would almost certainly have referred both Mrs. Bennett and Mr. Wilson to local solicitors under s. 5 of the Act. The two solicitors would have met at a "without prejudice" interview and put their cards on the table. As a result Mrs. Bennett would doubtless have been advised that it was useless to try to get blood out of a stone if, in fact, Wilson was as stony as suggested. The costs would have been negligible and there would have been an immense saving of legal and judicial time and temper.

Only slightly less urgent is the need for the extension of the Aid Scheme to county and other local courts. Both annual reports have referred to the anomalies which the present half-baked scheme produces. A plaintiff having the option of proceeding in a Palatine Court or the High Court may deprive the defendant of the chance of legal aid by choosing the Palatine Court. An even more serious anomaly arises in bankruptcy cases. Bankruptcy petitions must be presented in the High Court unless the debtor was resident or carried on business in the area of a county court outside the London bankruptcy district for the greater part of the preceding six months. Hence, a debtor lucky enough to have been resident in London can receive legal aid, whereas another whose circumstances are the same, except for residence, cannot. The whole of the Act was conceived as an integrated scheme and it will never work really smoothly and economically until the whole of it is implemented. Meanwhile, if one has to choose between the Legal Advice Scheme and an extension of the Aid Scheme, the Advisory Committee are undoubtedly right in thinking that "preventive medicine" should have priority to further opportunities for "surgical operations."

The only other major criticism from the public viewpoint is that the amount of contributions required has often proved unduly high. The Advisory Committee are unanimously of the view that, in certain circumstances, finding the contributions imposes too great a hardship. This is supported by the mounting number of cases in which persons (particularly those with dependent children) have fallen into arrears with their contributions. The committee conclude that a free income of £3 a week is no longer a correct criterion on which to base contributions, but, having regard to their recommendation regarding the implementation of the Legal Advice Scheme, they do not feel justified in asking for further public expenditure. The committee may well be right in not pressing this point at this stage, but, unless the cost of living falls substantially, it is felt that something will have to be done and that action here should take priority over an extension of the Aid Scheme to local courts. One may venture to doubt whether the cost would be as great as the committee seem to think. Contributions constitute a relatively small proportion of the total income of the Legal Aid Fund and the expense and difficulty of recovering them may well make it another false economy to require contributions which applicants cannot afford.

The other complications which have been met with must be disposed of more briefly. In some cases the National Assistance Board have found difficulty in arriving at a true assessment of the applicant's means—particularly with the self-employed or with persons in receipt of funds from relations. Closely allied to the problem of eradicating cases in which certificates are wrongly granted is that of preventing the extravagant handling of proper cases. The main difficulty here seems to be the lack of inducement to assisted litigants to settle out of court a problem which is particularly acute in the not inconsiderable number of cases in which both parties are aided. The solution may be to amend the regulations to make it clear that it is not merely a right, but a duty, for the solicitor to give up the case if he considers that the aided client is acting unreasonably. Neither solicitors nor barristers seem to be content with the somewhat parsimonious attitude of the taxing masters in aided cases (though the decision in *Gibbs* v. *Gibbs* [1952] P. 332 may help here) and counsel have been heard to grumble about the delay in payment of fees. The enforcement of judgments in favour of aided persons is also causing trouble, and practical difficulties have arisen in connection with applications by persons in a fiduciary capacity (*R.* v. *Manchester Legal Aid Committee* [1952] 2 Q.B. 413), but amendments of the regulations are under consideration to meet this last point. Incidentally, the case just cited shows that certiorari will lie to a legal aid committee. The Law Society conclude that this is a desirable result, although it is believed not to have been in accordance with the intention of the draftsman of the Act. Another anomaly arises where a motorist, suing as an assisted person, is met with a counter-claim covered by his third-party insurance policy; he then becomes assisted in regard to one aspect of the case and unassisted as regards another.

In this short survey attention has necessarily been drawn to flaws and difficulties, but it would give an entirely false picture unless it was emphasised that these are the rare exceptions and not the general rule. Considering the magnitude of the scheme it has worked with surprisingly few teething troubles and has undoubtedly fulfilled a valuable social purpose. Even those who take the view that the ending of marriage is a bad thing, however unhappy the marriage, may take consolation from the knowledge that assisted persons have already been enabled to recover well over £1,000,000 in damages in civil actions. And the prophecies of those who thought that it would lead to a multiplication of judges and fundamental changes in the organisation and traditions of the profession have been completely confounded. The resulting small increase in litigation has probably benefited the junior Bar but seems to have had little effect, one way or another, on the average solicitor's practice.

But—it is again emphasised—it is nearly ten years since the Rushcliffe Committee reported, and we are still waiting for implementation of the scheme as they conceived it, and as it needs to be if justice is to be done to rich and poor (more or less) alike.

L. C. B. G.

Mr. F. W. W. McCombe, C.B.E., has been appointed Chief Charity Commissioner for England and Wales.

Mr. R. L. Daniell has been appointed a Charity Commissioner for England and Wales.

Costs

CERTIFICATION AND TAXATION—(2)

In our last article we dealt with the procedure to be followed in obtaining a certificate from The Law Society as to the reasonableness and fairness of a solicitor's bill of costs computed according to Sched. II of the Solicitors' Remuneration Order, 1883, as amended by the Solicitors' Remuneration Order, 1953. Certification by The Law Society, it was noticed, was an alternative to and not a substitution for the client's right to have the costs taxed in the Supreme Court Taxing Office. He can still, therefore, have the bill of costs taxed in accordance with the provisions of the Solicitors Act, 1932. In short, a client who is so minded can apply in the first place to have the bill certified by The Law Society and then, if he is still dissatisfied, he can go on and have the bill taxed in the Supreme Court Taxing Office. There are certain limitations with regard to this right, and these will be examined now.

The sections of the Solicitors Act, 1932, dealing with the taxation of solicitor and client costs are ss. 66 to 68 inclusive. Section 66 provides that a party chargeable with a bill of costs may, within one month after the delivery of the bill, apply for an order that the bill shall be taxed. If the application is made within this period, whether the bill has been paid or not, then an order to tax will be made as a matter of course.

It will be remembered that under proviso (*c*) to the new Sched. II the client has no right to require a solicitor to obtain a certificate by The Law Society when once the bill has been paid. This limitation does not apply so far as the taxation of costs is concerned, so that in a case such as was envisaged in our last article where the bill of costs was paid by deduction, under the solicitor's common law right of lien on funds coming into his hands, although the client might perhaps be debarred from having the bill certified by The Law Society, he could certainly apply to have the bill taxed in the Supreme Court Taxing Office, and, if his application is made within one month of the bill being delivered, he will get an order to tax without further ado.

There is one further point that may be noticed here. Under s. 65 of the Solicitors Act, 1932, no action can be brought to recover a bill of costs less than one month after it has been delivered in accordance with the requirements of the section, and one of those requirements is that the bill shall be signed by the solicitor (or by one of the partners, where the costs are due to a firm) or accompanied by a letter so signed. It follows that the limitation of one month mentioned in s. 66, *supra*, commences to run only from the date when the bill is properly delivered in accordance with s. 65. It may be that one or more of the solicitor's staff are authorised to sign letters in the solicitor's name, but even in this case a letter enclosing a bill of costs must be signed by the solicitor himself, if the bill is not already so signed, in order that it may have been properly delivered, for it will be observed that s. 65 does not permit of any delegation in the matter of signing a bill of costs, or the letter accompanying it.

The "party chargeable" with the bill who may apply for an order for taxation under s. 66 is the client. Where someone other than the client has paid or is liable to pay the costs then he may apply for an order to tax in the same way as the solicitor's own client (see s. 67 of the Act). This enables a mortgagor or lessee who has agreed, or who is by custom required to pay, or has paid, the mortgagee's or the lessor's costs, to have the bill taxed; and in such a case the same considerations apply, that is to say, the application must be made within one month of the date of the delivery of the bill. The mortgagor or lessee, as the case may be, who cannot, as was observed in the last article, call upon the solicitor to obtain a certificate from The Law Society, will have no difficulty in getting an order to tax the costs in the Supreme Court Taxing Office.

If the party chargeable with, or who has paid, or is liable to pay the solicitor's bill of costs neglects or fails to make an application for an order within the period of one month from the date of the delivery of the bill, he is not thereby debarred from having the bill taxed in the Supreme Court Taxing Office, but he must do so within twelve months after the bill has been paid, for otherwise he will be too late, and no order will be made (see s. 66 (*2*), proviso (ii)). There must be some finality about the matter, and if over twelve months have elapsed since the bill of costs was paid, the solicitor is entitled to assume that the matter is finally closed.

On the other hand, if more than one month has elapsed since the bill of costs was delivered, the party chargeable or liable to pay the bill can still make an application, but whether an order to tax is made in that case is entirely within the discretion of the court, and it may make an order on such terms as it thinks fit. Subsection (1) of s. 66 is imperative, whilst subs. (*2*) is permissive, and the result may be summarised shortly by saying that if the application is made within one month of the delivery of the bill an order will be made, but if it is made more than a month after the bill was delivered an order may be made.

The proviso to subs. (*2*) of s. 66 carries the matter a stage further, for if more than twelve months have elapsed since the delivery of the bill, or if the bill has been paid, and this means paid more than a month after the delivery of the bill, an order for taxation may be made only in special circumstances. Precisely what special circumstances will warrant the making of an order will depend entirely on the facts of the particular case, but the client or party chargeable who makes an application some eighteen months after delivery of the bill would have to show the reason for his delay in applying for an order as at least one of the special circumstances. In this respect it will be observed that in the case of a partly liable to pay the costs, other than the party chargeable, for example, a mortgagor liable to pay the mortgagee's costs, the court may take into account special circumstances affecting the applicant which do not affect the party chargeable (see s. 67 (1), proviso). Thus, it seems likely that a mortgagor who has been ill and unable to deal with business affairs for a considerable time may, when he resumes his normal activities, apply successfully for an order to tax the mortgagee's solicitor's bill of costs, however long a period has elapsed after delivery of the bill, by pleading his illness as a special circumstance. He would not be able to do so, however, if the bill had been paid (see s. 66 (2), proviso (ii)); and it may have been paid, as it often is, by deduction from the mortgage money. If this happens then the mortgagor, seemingly, would (*a*) be unable to call for the bill to be certified by The Law Society, since it is only the client, that is the mortgagee, who can do that, (*b*) would be unable to obtain an order for taxation if more than a month had elapsed from the delivery of the bill which, in this case, would have been paid by deduction on or before the date of delivery. It is not likely that he would experience any difficulty in obtaining an order, however, where he applies shortly after one month from the receipt by him of the mortgagee's solicitor's bill, especially if he can show that he utilised that month in

protesting at the amount of the bill and in endeavouring to obtain a reduction thereof.

The costs of taxing the bill of costs will follow the event, where the application is made by the client or the party liable, unless the order for taxation otherwise provides, which means that if the bill is allowed in full, or there is only a trifling reduction, then the costs of the taxation will be paid, normally, by the party seeking the order for taxation. If, however, more than one-sixth of the bill is taxed off, then the solicitor will himself have to pay the costs of the taxation (see subs. (4) of s. 66). Note that it is one-sixth of the bill that determines this point, not one-sixth of the solicitor's fees, so that if a disbursement included in the bill is considerably reduced, say, for example, counsel's fees, this may have the effect of mulcting the solicitor in the costs of the taxation.

Apart from the question of the costs of the taxation, it will be remembered that where the taxing master allows less than one-half of the amount charged, that is, the amount charged by the solicitor under Sched. II, and not necessarily less than one-half of the amount of the bill, the matter will be reported to The Law Society (see proviso (*e*) to the new Sched. II).

On a taxation of costs computed according to Sched. II, it will be necessary to support the amount charged, not with the details of the charges on an item basis as heretofore, but with full particulars of the special circumstances upon which the solicitor has relied in fixing his fee; and one of these circumstances, it will have been noted from a previous article (and the point has now been emphasised by the statement of The Law Society published in the March issue of the *Law Society's Gazette*), to which particular attention will be paid, is the time expended by the solicitor and his staff. It is felt that unless the solicitor is prepared to substantiate his charges with full details, kept and recorded at the time when the work was done, of the time expended on such work, he will stand little chance of convincing a taxing master of the reasonableness of his fee.

A few remaining points arising from the new Remuneration Orders will be dealt with in our next article.

J. L. R. R.

Procedure

XXII—SUBSTITUTED SERVICE

A RECENTLY reported divorce appeal (*Wiseman* v. *Wiseman* [1953] 2 T.L.R. 499; *ante*, p. 147), turned on the proved fact that an advertisement in a newspaper, ordered to be inserted by way of substituted service of a petition for dissolution of marriage, had not come to the attention of the respondent, who had therefore had no opportunity of being heard in the proceedings.

That particular mode of substituted service—by notice advertised in a newspaper circulating in a district where the party to be served is believed to be, or in a technical journal taken in a particular trade—is the one most often appropriate in the Divorce Division. Its use may be sanctioned, too, in other divisions (see, e.g., Chitty's King's Bench Forms, p. 83), but the phrase "substituted service" normally means to the common-law or Chancery practitioner service by post, by prior authorisation, of process which ordinarily would require personal service. For this, needless to say, the address of the party to be served needs to be known. If a respondent or co-respondent's address is known, a divorce petition may now be served as of course by registered post, provided that a signed acknowledgment of the service can be obtained. The nearest approach to this in the case of originating process in the Queen's Bench, Probate and Chancery Divisions is the acceptance of service by a solicitor who undertakes to appear.

The steps necessary to ground an application for substituted service in what the White Book calls "ordinary cases" are well known. A memorandum on the subject, originally settled by the King's Bench masters in 1908, has been revised since the war in the direction of simplicity. Two calls only at the defendant's private or business address, as the case may be, are now necessary, the second being by appointment made by letter giving two clear days' notice. The various firms of process-servers know the routine, and, having made the attendances, will usually see to the preparation and swearing of the necessary affidavit on the solicitor's request.

But whether the solicitor is dealing with an ordinary case or is faced with the more tricky problem of a defendant whose address is unknown or who has gone abroad, he should know and observe the principles which always govern the availability of substituted service. The court is really torn between two ideals which sometimes turn out to be incompatible. On the one hand, "it is the essential foundation of the administration of justice that a person against whom an action or other proceeding is brought should have notice of the proceedings" (*per* Cockburn, C.J., in *Watt* v. *Barnett* (1878), 3 Q.B.D., at p. 185). On the other, the court will not tolerate that its process should become ineffectual, and a party's rights defeated by practical difficulties over which he has no control. The rules accordingly authorise such order as may be just "for substituted or other service or for the substitution for service of notice by advertisement or otherwise" if it be made to appear to the court, on affidavit setting forth the grounds of the application, that the plaintiff is from any cause unable to effect prompt personal service (R.S.C., Ord. 9, r. 2; Ord. 10).

Though the procedure has become stereotyped in the case of the defendant who is always out, or who sends someone else to the door on principle, there are a number of more recondite instances in the books which it may be useful to survey. In particular where a defendant, within the jurisdiction at the time the writ is issued (see *Wilding* v. *Bean* [1891] 1 Q.B. 100), goes abroad and keeps abroad so that personal service cannot be effected, or if even before the issue of the writ he goes out of the jurisdiction in order to evade service (*Re Urquhart* (1890), 24 Q.B.D. 723), the court may order substituted service if a method exists whereby it appears that the matter can be brought to his notice. The affidavit supporting the application should always suggest a method, and should testify to the deponent's belief in its effectiveness. Only if there is a probability of the defendant being thereby reached will the court direct service by the method in question (*Wolverhampton & Staffordshire Banking Co.* v. *Bond* (1881), 43 L.T. 721).

In the *Wolverhampton* case the defendant was a tradesman who had absconded, it was believed, to Australia, but his relations did not know where he was. Jessel, M.R., gave leave for service on the relations, coupled with advertisements in *The Times*, and a local paper. It is recorded that the defendant was stated to have effected legal mortgages of property which was already equitably charged to the plaintiffs, and this circumstance was no doubt taken into account as colouring the defendant's aloofness.

In *Jay* v. *Budd* [1898] 1 Q.B. 12 a double-barrelled method was again favoured. The defendant had discussed the plaintiff's account with him and had given the plaintiff the name of a solicitor who was shown to have acted for him in various matters. The writ was issued on the day that the defendant boarded ship for Jamaica, and a clerk, apprised by telephone of the issue, promptly handed a copy to the defendant in the presence of the defendant's solicitor. The clerk was unprovided, however, with the original writ, for a sight of which the solicitor did not neglect to ask. The solicitor refused to accept service, although he did later inquire by letter whether an order for substituted service had been made, and himself entered appearance for the defendant in another action in which the writ had been regularly served on board ship on the same occasion. It was shown that the defendant's business had been delegated, during his absence from England, to a manager. In all these circumstances the Court of Appeal, by a majority, ordered service on both the solicitor and the business manager, but gave two months for entry of appearance.

Solicitors who have admitted that they are in touch with the party to be served or who can be shown to be acting for him in other contemporaneous matters may thus find themselves selected as the channel for substituted service. An extreme case was *Slade* v. *Slade* (1881), 45 L.T. 276, where the solicitors and attorneys of a defendant resident abroad had actually briefed counsel on his behalf on the motion for substituted service of a writ of sequestration in proceedings already pending. The criterion seems to be whether the person in fact served is likely to communicate the fact of service to the party himself.

The circumstances of *Hunt* v. *Austin* (1882), 9 Q.B.D. 598, are hardly typical but show an interesting variant. A summons requiring personal service was there ordered to be served by the exhibition in the master's office of a notice calling upon the defendant to attend in one month, with similar notices to the defendant's solicitor and to a known associate and an advertisement in *The Times*. More curious still is *Trubner* v. *Trubner* (1889), 15 P.D. 24, where a citation in matrimonial proceedings required to be served on an Austrian co-respondent living in Switzerland. Swiss law, the court was told, would give him a right of action against any person serving him with English process. Accordingly, service was allowed by registered letter, an extra copy of the document being for good measure sent to the respondent, who was living with the co-respondent and who had already, being a British subject unprotected by Swiss law, been personally served.

Apart from exceptional cases such as *Slade* v. *Slade, supra*, the application for substituted service will of necessity be made *ex parte*. An opportunity for contesting the matters put before the court will, however, occur in many cases after the order has been made and carried out, although the defendant must then apply within a reasonable time and before taking any fresh step after knowledge of the irregularity of which he complains (R.S.C., Ord. 70, r. 2). His appearance should be a conditional one. The court has a discretion to set aside an *ex parte* order where the applicant has failed to make sufficient or candid disclosure even without fraud (*Lazard Bros. & Co.* v. *Midland Bank, Ltd.* [1933] A.C., at p. 307). The matter is one of discretion, and the order will not be set aside automatically on it being shown that the proceedings did not come to the defendant's knowledge until too late. On the contrary, before the defendant is let in, the court will consider whether there are any grounds for thinking that there is a substantial issue to be tried (*Watt* v. *Barnett, supra*).

With this proposition *Wiseman* v. *Wiseman* is entirely consistent, for the respondent wife alleged desertion by the husband, who had successfully petitioned on the same ground. Notwithstanding that the husband's decree had been made absolute and that the husband had remarried, the Court of Appeal set aside the substituted service and subsequent proceedings, and gave time for the respondent to answer the petition.

J. F. J.

A Conveyancer's Diary

VENDOR'S NOTICE TO COMPLETE

It will be recalled that in *Smith* v. *Hamilton* [1951] Ch. 174 it was held, somewhat to the surprise of many, that the very common printed condition of sale which gives the vendor certain rights in connection with the resale of the property on the purchaser's failure to complete does not entitle a vendor to act upon this condition immediately the completion date has passed without completion having taken place, unless time is of the essence of the contract or can properly be made so by the vendor. The reasoning of this decision was as follows: this condition gives the vendor certain rights which arise on the purchaser's failure to complete in accordance with the contract; by reason of the equitable rules as to time, a purchaser is ordinarily allowed to complete his purchase on the date fixed for completion or within a reasonable period thereafter; there is therefore, on grounds of non-performance alone, no failure to complete in accordance with the contract until such a reasonable time has elapsed. (The qualification "ordinarily" in this summary of this decision is, of course, all important, because the statement that a party has a reasonable time in which to complete a contract for the sale of land is really a generalisation of the more particular principle of equity that a party has not failed to perform a contract until he has, either by his conduct or his inaction, deprived himself of the remedy of specific performance, and delay is not the only way in which a party may deprive himself of that right: see on this the most illuminating of all judgments on this subject, the speech of Lord Parker in *Stickney* v. *Keeble* [1915] A.C. 386, 415.)

I have drawn attention to *Smith* v. *Hamilton* once again because this decision must nowadays be regarded as the starting point for the consideration of that very common problem: if a purchaser fails to complete on the day fixed for completion, what does the vendor do next? There are a variety of courses open to the vendor, some of which he can pursue independently of the contract, others of which are only open if the contract so permits. Most contracts for the sale of land prepared with professional assistance nowadays incorporate one or other of the popular printed-form conditions, and the vendor is thus usually provided with a number of diverse remedies; but, as *Smith* v. *Hamilton* warns us, whether the remedy which is selected is one which arises as the result of express contract, or apart from contract, breach of contract by the purchaser is the foundation of the vendor's rights, and mere delay in completion is not necessarily a breach.

Assuming, however, that the purchaser is in breach of his contract, according to the strictest canon of *Smith* v. *Hamilton*, and assuming further that the contract incorporates

a "resale" condition such as cl. 32 of The Law Society's Conditions of Sale, or cl. 25 of the National Conditions (15th ed.)—with which may be compared cl. 9 of the Statutory Conditions of Sale, 1925—the vendor must take stock of his position before serving any form of notice on the purchaser. The courses open to him apart from any condition are these: he may bring an action for damages or for the forfeiture of the deposit at common law, or he may seek specific performance of the contract or a declaration that the contract be treated as rescinded in equity. These are rights which accrue to the vendor, in the form of causes of action, immediately after the purchaser has committed a breach of his contract, and as a matter of strict law no sort of communication from the vendor to the purchaser is needed in order to enable the vendor to bring an action for the relief of his choice. (The problems which have to be considered when evidence of a breach of contract on the part of a purchaser is being collected are totally different: requests to complete and expostulations at continuing delay necessarily have their place as evidence of a breach, but once a breach has occurred and can be proved, nothing more is, strictly speaking, needed to complete the vendor's case.) But in practice it is usual, indeed almost invariable, for the vendor to warn the purchaser who is in breach of his contract that unless he completes within such time as the vendor may, as a matter of grace, allow him, proceedings will follow.

In contradistinction with the position under a "resale" condition, such a communication is strictly speaking unnecessary; but the fact that it is tactically desirable and in practice seldom omitted has doubtless caused some confusion between communications of this kind and notices to complete *stricto sensu*, the primary purpose of which is not to give the purchaser a *locus pœnitentiæ* but to perfect a right in the vendor which, up to the service of such notice, is inchoate. We have assumed, for the present purpose, that the purchaser is in breach of his contract, but if the purchaser has merely failed to complete his purchase on the day fixed for completion, a notice to complete is often served giving the purchaser an extension of time and, if the extension is reasonable, failure to comply with the notice puts the purchaser in breach. That is one purpose of a notice to complete, and it should be noted that such a notice is good and complete without specifying any penalty for non-compliance, or adverting in any way to the vendor's rights or intentions in the event of non-compliance. But to revert to the kind of communication which precedes an action by the vendor for any of the remedies available to him on the purchaser's breach, this is really no more than a matter of courtesy, for the vendor's right to damages, or to the deposit, or to equitable relief, is not perfected by such a communication; evidence apart, the right has already arisen.

Quite different is the position under a "resale" condition. To take cl. 32 of The Law Society's Conditions first, this provides, in effect, that if the purchaser fails to perform his part of the contract, the vendor may give him fourteen days' notice in writing specifying the default and requiring the purchaser to make good the same before the expiration of the notice, and further, that if the purchaser does not comply with the notice, the deposit shall be forfeited, the vendor may resell, and if the resale takes place within a year after the date fixed for completion, any deficiency on the resale may be recovered from the purchaser as liquidated damages. The National Conditions are much to the same effect, except that notice is not necessary to enable the vendor to take advantage of the resale provisions, but nevertheless I think that if the vendor wishes to take advantage of this very useful condition (the power to recover a deficiency on resale as liquidated damages makes it possible to sue for such damages under the summary procedure afforded by R.S.C., Ord. 14, in all divisions of the High Court), he should always give notice, wherever that is possible, to the purchaser of his intention to resell under the condition. The reason why I recommend this course is that the vendor may, in the postulated event of the purchaser's breach, sell the premises to a third party under one of two titles, either as absolute owner apart from any condition, or under the condition (see *Howe* v. *Smith* (1884), 27 Ch. D., at pp. 104–5); in the latter case the condition gives him certain procedural advantages, which in the former case he will lack; and as such cases as *Howe* v. *Smith*, *supra*, show, unless the vendor makes it clear exactly what rights he is asserting against the purchaser, the latter is provided with a line of defence in subsequent proceedings which, if unsuccessful in the end, may still cause the vendor much delay and inconvenience.

There are thus three different stages of the transaction between a vendor and a purchaser of land at which the vendor may need to request the purchaser to complete. The first of these stages is when, time not being of the essence, there has been delay in completion, but the delay has not been so protracted as to deprive the purchaser of the benefit of equitable rules as to time. At this stage the vendor informs the purchaser that he requires that the purchaser complete within a specified time. The expiration of the period specified (assuming that it is reasonable) is a condition of the accrual to the vendor of a cause of action, and it is quite unnecessary in any notice given at this stage to refer to the consequences of non-compliance; in fact it is better not to do so, since if the purchaser fails to comply the vendor will, in general, have two broadly alternative courses open to him—to bring an action for relief at law or in equity, or, assuming the contract contains a "resale" condition, to resell the property and rely on that condition to recoup himself any deficiency—and to threaten one of these courses at this early stage may eventually estop the vendor from pursuing the other. At this stage, the vendor's prime concern should be to fix the purchaser with liability for the breach, but otherwise to keep the situation fluid.

Once the purchaser is in breach, however, totally different considerations apply. Now is the time for the vendor to take stock of his position, to decide what course he will pursue, and take appropriate action. As I have already suggested, if the vendor decides to issue a writ for relief at law or in equity, no further notice to complete in the strict sense of that expression is necessary; a warning letter is the communication appropriate to this decision, and if this letter should, as a courtesy, give the purchaser one last opportunity to complete before a writ is issued, this still does not make the letter a notice to complete, nor should it be couched as such. Finally, if the vendor's decision at this stage is not to issue a writ but to resell under a condition for resale, a notice in accordance with the requirements of the condition (which vary from one form to another) must be served in order, as I have pointed out, to enable the vendor to rely on that condition. Of these three notifications (to use a neutral word) only the first, in my opinion, is truly a notice to complete, although the last is sometimes also so referred to; but the point I wish to make before leaving this subject is that every such notification must take into account the circumstances in which it is made and, above all, the end which the vendor has in view in making it. There is no stock form to be used on all occasions as a matter of rote; a conscious decision, based on a proper appreciation of the vendor's position *vis-à-vis* the purchaser, must always precede the notification, whatever it may be. "A B C"

Landlord and Tenant Notebook

AGRICULTURAL HOLDINGS: EFFECT OF SURRENDER

It is, I think, permissible to wonder whether the decision of the Court of Appeal in *Dalton* v. *Pickard* (1911), unreported at the time, but a fair account of which is given in a note to *Richmond* v. *Savill* [1926] 2 K.B. 530 (C.A.), was brought to the notice of the draftsmen of Agricultural Holdings Acts passed since its date.

The facts of *Dalton* v. *Pickard* were that the tenant of a farm whose lease was due to expire in 1913 negotiated, early in 1910, a surrender with his landlords. After meeting them and discussing the proposal, no claim for dilapidations being mentioned at the interview, he wrote a letter saying: "I am willing to give up the whole of my holding . . . at Michaelmas next providing I am allowed fair valuation, and the whole of my live and dead stock to be included in the valuation, and also an allowance of a half-year's rent." The landlords' solicitors acknowledged the letter and accepted the offer, repeating its terms (specifying 11th October next as the date, from which it would appear that "old Michaelmas" was intended). The tenant duly gave up possession and an arbitration followed under the Agricultural Holdings Act, 1908; it is not clear why, but at all events the landlords then "put in a schedule of dilapidations" and the tenant objected that he had understood the bargain to mean that he was to get the value of live and dead stock and half a year's rent free of all cross-claims for dilapidations. The arbitrator stated a case and the local county court judge agreed with the tenant. The Court of Appeal did not.

Two arguments could be advanced for the tenant in such circumstances: (i) that an agreement to surrender *simpliciter* extinguishes claims for antecedent breaches, and the agreement made in this case did nothing to preserve such claims; (ii) that the effect of the agreement in this case was to extinguish such claims even if a mere surrender in itself would not have had such effect. The first point was most fully dealt with in the judgment of Farwell, L.J., who held that it was quite plain that a surrender is not by itself an accord and satisfaction, a view founded on or supported by ancient authorities such as *Walker's Case* (1587), 3 Co. Rep. 23*b*, and Platt on Leases. The second was most forcefully rejected by Vaughan Williams, L.J., who actually considered that as the tenant's letter had "anticipated" a valuation, which always meant that there would be claims by both sides and a balance struck, there was nothing in the agreement to deprive the landlords of their right to dilapidations.

Richmond v. *Savill* concerned an agreement to accept the surrender from the original tenant's executor of a lease of a dwelling-house, and similar points were taken. And although the industry of those representing the executor (who had won in the High Court) unearthed a passage from the Old Natura Brevium by way of counterblast to the result of Farwell, L.J.'s research work in *Dalton* v. *Pickard*, their opponents were able to cite a vast and formidable number of more recent authorities on the question of the effect of a surrender in general. As to the particular words used, the landlord's brother had written: "If Lady *H's* executor agrees to pay the rent of . . . up to . . . and gives possession not later than . . ., my brother is willing to release him"; and the executor had taken too generous a view of the meaning and effect of the expression "release."

Now the Agricultural Holdings Act, 1948, confers a number of statutory rights on tenants which mature "on the termination of the tenancy, on quitting the holding," or on "quitting the holding on the termination of the tenancy," and while much of the statute is concerned with ensuring that whatever a habendum may say there is to be no termination without notice to quit being given, s. 94 (1) enacts: "'Termination' in relation to a tenancy means the cesser of tenancy by reason of effluxion of time *or from any other cause*." Surrender would (as would merger or forfeiture) of course be an example of cesser from another cause.

But the Act contains certain other provisions to which careful regard should be paid by anyone engaged in negotiating a surrender. They are of two kinds: those regulating procedure to be followed in making claims, and those concerned with contracting out.

In general, any claim for statutory compensation, or for compensation by custom or agreement, which arises on or out of the termination of the tenancy ceases to be enforceable unless notice of intention to make it is served before the expiration of two months from the termination in question. This is the combined effect of subss. (1) and (2) of s. 70. But, what is more important, there are cases in which some notification *before* the termination is a condition precedent to a claim. If the tenant has continuously adopted a more beneficial system of farming (and the necessary record has been made), he must, in order to claim compensation under s. 56, give notice in writing of his intention at least a month before the termination of the tenancy. And if the landlord contemplates a claim for deterioration caused by non-fulfilment of the tenant's responsibilities to observe the rules of good husbandry, he must likewise give a month's notice of intention before the tenancy terminates (s. 57). It is true that *Kent* v. *Conniff* [1953] 2 W.L.R. 41; *ante*, p. 46 (C.A.), has shown that that section does not affect claims for breaches of covenant, so that whether it should be a factor in the negotiations in any particular case must depend on what covenants there may be; the position of the landlord in *Dalton* v. *Pickard*, who presumably relied on covenants, would not be affected, apart from the fact that he would have had ample time to serve his notice after the agreement had been concluded. Then, negotiating parties may have occasion to bear in mind that the s. 12 restriction on removing manure, hay and straw, roots, etc., applies only when termination is by notice to quit; and, should there be any possibility of the tenant having a claim for compensation for damage done by game, under s. 14, the requirements of that section as regards time for notice should not be lost sight of. And, if the tenant is to exercise the statutory right to remove fixtures conferred and regulated by s. 13, forethought may again be necessary.

It follows that in some circumstances special provision should be made either to preserve rights or to exclude them, and the question may then arise whether such agreements will fall foul of any of the restrictions on contracting out.

There is a *general* provision in s. 65 (1): "Save as expressly provided in this Act, in any case in which . . . the provisions of this Act provide for compensation, a tenant or landlord shall be entitled to compensation in accordance with those provisions and not otherwise, and shall be so entitled notwithstanding any agreement to the contrary . . ."; it will be observed that the restriction is not limited to agreements contained in the tenancy itself. Under the Agricultural Holdings (Scotland) Act, 1883, and the Agricultural Holdings Act, 1908, it was held, in *Cathcart* v. *Chalmers* [1911] A.C. 246,

that a clause limiting the time for making claims to one month was void. Dealing with the possible substantive claims which I have mentioned, a tenant's right to compensation for adopting a better system (s. 56) appears to be within the general provisions of s. 65 (1); a landlord's claim for deterioration under s. 57 may be made either under subs. (1) or under subs. (3), but then "in accordance with a written contract of tenancy"—hence, an agreement to surrender which took away the right or substituted its own measure would be ineffective. There is nothing in the Act, as we have seen, to prevent the tenant from removing manure, etc., when no notice to quit has been given; possibly in some circumstances the law of waste might operate, but it would be as well for the surrenderee to make apt stipulations. The question whether by such an agreement a tenant could effectively give up his right to remove fixtures under s. 13 is rather more difficult; that section requires notice of intention to remove the fixtures or building to be given at least a month before *both* the exercise of the right *and* the termination of the tenancy, so that if there were an agreement to surrender in three weeks' time, say, the tenant would have to preserve his rights by express provision or else lose them. Suppose, however, that the surrender was, as in the case of *Dalton* v. *Pickard*, to occur some months later, but that the tenant was willing to leave his fixtures, etc., as part of the bargain. On this, one can say that contracting out of the section is not prohibited either by the section itself or by s. 65 (1), and in my submission the agreement would be valid.

R. B.

PRACTICAL CONVEYANCING—LVI

UNDEVELOPED LAND

THESE notes have not contained any comment on the practical effect of the abolition of development charges although the topic is one of considerable interest to conveyancers. The reason is that the progress of the Town and Country Planning Bill in the House of Commons has been rather slow and any conclusions on points of detail may not be final. The contents of the Bill and of the Government White Paper were fully considered in a series of articles which appeared in vol. 96 at pp. 771, 793, 809 and 839. The Bill has now received its third reading in the Commons, however, and it is proposed to draw attention to a few points the significance of which may not have been apparent from previous discussions of the proposals.

The reason for the slow progress of the Bill appears to be that Parliamentary time has been fully occupied with other legislation and that the Central Land Board, by administrative steps, have been able to give effect to the main object of the Bill, namely, to abolish development charges, without waiting for the Bill to be passed. That a body such as the Central Land Board can act administratively in advance of legislation on so important a matter may raise issues of concern in the sphere of constitutional law, but for our present purpose it is sufficient to note the fact.

Now that a purchaser need not be concerned about liability for development charge, more land appears to be changing hands. There is no artificial restraint on prices and so land with a development value will be sold at a price reflecting that value; the "existing use value" is almost obsolete. Nevertheless, it is necessary to bear in mind two dangers facing a purchaser of such land.

In the first place, planning permission for intended development may be refused. The Government White Paper (Cmd. 8699) indicates that policy regarding payment of compensation for refusal of permission is not finally determined. For instance, there is a rather vague statement that it is reasonable "to exclude compensation in respect of restrictions based on the principle of good neighbourliness." Much more important is the proposal that compensation for refusal of planning permission will be paid only up to the value of admitted claims for payment from the £300 million fund. If this rule is adopted then there will be no compensation unless there was such a claim (which some landowners omitted to make in spite of all the publicity), and a claim may be for an inadequate sum. It follows that it may be more important than ever to obtain planning permission before entering into a firm contract to purchase.

An incidental point is that an intending developer may have a much greater financial incentive to endeavour to obtain planning permission than he had when he was subject to development charge. Consequently, it would be reasonable to expect more hard fought appeals from the decisions of local planning authorities. To some extent, many solicitors seem to be out of touch with such work, with the result that it is falling, in small cases at any rate, largely into the hands of other advisers. This is unfortunate. There is nothing unduly difficult about the presentation of an appeal, which is not usually an expensive step; the Minister very rarely awards costs against an unsuccessful appellant.

The second danger to a purchaser of undeveloped land is compulsory purchase by a local or other authority. The Bill at present before Parliament does not alter the existing rule that such authorities pay compensation based on existing use value only. The White Paper states that in due course the Government will pay additional compensation where compulsory acquisition has taken place under these terms, but, again, this will be limited to the amount of any admitted claim on the £300 million fund.

The acquisition, even by agreement, of land by a local or other authority having a compulsory power may be a matter of some difficulty. The rule has been established for some time that such an authority should not agree to pay more than the compensation they would have to pay if they took compulsory proceedings. It follows that, unless there is some modification of this rule, authorities will continue to try to buy at existing use value. If the owner has an offer of full market value from someone else he will probably prefer to accept it as it may be more favourable to him than the total of (*a*) existing use value, and (*b*) the prospect of receiving at some time in the future the balance of the amount of the admitted claim (if any) on the £300 million fund. It is, however, interesting to note that the Minister of Housing and Local Government has given an assurance (p. 157, *ante*) that owners who sell by agreement to public authorities at existing use value will not be treated less favourably in the matter of compensation than those whose land is compulsorily acquired.

These considerations do not affect land which is fully developed. They show, however, that as regards other land there may still be importance in the questions whether there has been a claim on the £300 million fund, and, if so, the amount admitted. Many other problems affect undeveloped land, particularly as to the assignment of any admitted claim; these will be mentioned later.

J. G. S.

Mr. H. E. DAVIES, Q.C., has been appointed Recorder of the City of Cardiff.

Mr. N. K. COOPER, assistant county prosecuting solicitor for Dorset, has resigned to take up a similar appointment with the Kent County Council.

Mr. R. A. FOSTER, second assistant solicitor to Swansea Corporation, has been appointed clerk to Gower Rural Council.

Mr. N. B. JENNINGS, assistant solicitor to Salford Corporation, has been appointed chief assistant solicitor to Birkenhead Corporation.

HERE AND THERE

PROBLEM TAPESTRIES

WHEN the Law Lords first started hearing appeals in Committee Room No. 1, its only decoration was a very large portrait of Lord Chancellor Eldon in a massive gilt frame. If I remember rightly, an identical picture is to be seen in Oxford, but which is the original and which the copy I never knew. Anyhow, behind the backs of counsel as they argued hung his likeness, fully robed and glowering severely over their heads at his successors and their noble and learned friends sitting at the table opposite. Quite suddenly, at the beginning of last week, in the middle of the hearing of Revenue appeals, there was a dramatic change of *décor*, a veritable transformation scene. Lord Eldon vanished, and his wall and the wall opposite were entirely filled above panelling level by two enormous 18th century tapestries of classical inspiration but somewhat recondite treatment. In the midst of the convolutions of an income tax argument concerned with the problems arising out of a transfer of assets, they were calculated to induce a species of schizophrenia, and a venerable and distinguished junior counsel, famous for his classical erudition, confessed that, distracting as they were, he could make nothing of them. Above the heads of the Law Lords a sylvan scene unfolds itself. In the centre a warrior, armoured and helmeted and plumed, kneels before a child some four or five years old, while a bevy of nine lovely females cluster round. Other activities are in progress. In the left background four more ladies are engaged in a musical *divertimento*, vocal and instrumental; in the right foreground another four are tastefully grouped in the manner of a conversation piece. A spectator of indeterminate sex watches the proceedings eagerly from the branches of a tree, while from afar a second warrior, leaning on a rock beside a river, contemplates the scene with more detachment than curiosity. On the opposite wall the happenings are equally intriguing. Against a background of martial tents, a regal pavilion, occupying the central foreground, is filled to capacity with kneeling figures, male and female, some upright and pleading, others abject; in particular, an armed man grovels beside his shield, his head, clasped in his hands, pressed to the ground. On the left, two gorgeously armoured figures, evidently officers of the highest rank, contemplate the suppliants with well-bred interest. On the right, two private soldiers armed with lances exchange lively comments on the episode.

PLEA TO THE RELEVANCY

PRIVATE inquiries at the Ministry of Works have elicited the information that the first tapestry depicts a Greek warrior worshipping Cupid and the second Alexander the Great visiting the camp of Darius. Both have been provided by the kindness of a titled lady. Now, the Court of Cassation in Paris is indeed lavishly decorated with painted panels of ladies of allegorical character and profusely displayed attractions, and it is very fitting that our own equivalent tribunal, even when working away from the gilded gothic splendours of the House of Lords Chamber, should have its share of aesthetic amenities; but the immediate relevance of these particular amenities, even allegorically considered, to any known aspect of our legal system tends to strike one as obscure and ill-defined. The warrior worshipping Cupid in the midst of a bevy of bowery, flowery female interveners might perhaps make a suitable and appropriate adornment for the walls of whichever court in the Divorce Division most frequently concerns itself with undefended petitions. (Then the spectators might be taken as Queen's Proctor's Agents.) Apart from that, however, it would be hard to find it a suitable shrine to inhabit the Temple of British Themis. At first sight the second tapestry facing their lordships might seem to present even greater difficulties but, properly considered, it assumes an almost startling appropriateness. Those kneeling figures, those creatures grovelling in apprehensive supplication—as the Law Lords gaze at them, a background to the dignified wigs of counsel, they must seem to see the actual appellants and respondents in attitudes of symbolic agony humbly petitioning for a favourable decision the lordly ones spiritually arrayed in the panoply of justice, impartially and serenely regarding them, while the attendants, policemen and doorkeepers take a somewhat less loftily detached interest in the drama unfolded. Perhaps the figure hugging his head on the floor has been trying to follow the arguments presented by his legal advisers. Or perhaps he is a law reporter similarly engaged.

AHEAD OF THE NEWS

THE Press lately seems to have had a fit of (shall we say?) prematurity in announcing resignations and successions in the legal hierarchy. A distinguished financial paper devoted two paragraphs to an extremely laudatory valedictory of Lord Normand, phrased as if his departure were virtually a *fait accompli*, while all the time there he was presiding in the Appellate Committee and showing no perceptible symptoms of imminent retirement. After all, it was only in 1947 that he migrated thither from Edinburgh. Lord Porter has been a Law Lord since 1938. Another journal took it upon itself to depose Lord Goddard, a report immediately denied. Sir Walter Monckton, Q.C., was very kindly nominated by Fleet Street as the new Chief Justice and, indeed, should the occasion arise few would have so good a claim as he; a couple of former Law Officers perhaps and one brilliant Queen's Bench judge. But just at the moment both Lord Goddard and Sir Walter are doing outstandingly useful work, each in the sphere to which it has pleased Providence and the Crown to call him.

RICHARD ROE.

BOOKS RECEIVED

Learning the Law. Fourth Edition. By GLANVILLE L. WILLIAMS, LL.D. (Cantab.), Quain Professor of Jurisprudence in the University of London, of the Middle Temple, Barrister-at-Law. 1953. pp. xiv and 210. London: Stevens & Sons, Ltd. 12s. 6d. net.

The Commercial Dictionary. By A. G. P. PULLMAN, of the Middle Temple, Barrister-at-Law, and D. W. ALCOCK, A.S.A.A., A.A.C.C.A. 1953. pp. v and 316. London: Sweet and Maxwell, Ltd. 25s. net.

Prideaux's Forms and Precedents in Conveyancing. Twenty-fourth Edition in Three Volumes. By J. BROOK RICHARDSON, M.A., LL.B., of the Middle Temple and Lincoln's Inn, Barrister-at-Law. Volume 3. 1952. pp. cxii and (with Index) 1090. London: Stevens & Sons, Ltd.; The Solicitors' Law Stationery Society, Ltd. £4 15s. net.

Palmer's Company Precedents. Sixteenth Edition. Part 3: Debentures. By His Honour the late A. F. TOPHAM, K.C., LL.M., Bencher of Lincoln's Inn, and R. BUCHANAN-DUNLOP, B.A., of the Middle Temple, Barrister-at-Law. 1952. pp. lxxi and (with Index) 847. London: Stevens & Sons, Ltd. £6 6s. net.

Skinner's Property Share Annual. 1952–53. pp. xlviii and 321. London: Thomas Skinner & Co. (Publishers), Ltd. 30s. net.

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Williams on the Law of Executors and Administrators. Thirteenth Edition. Volumes I and II. By Sir DAVID HUGHES PARRY, M.A., LL.D., D.C.L., an Honorary Bencher of the Inner Temple, Professor of English Law, University of London, assisted by DONALD CHARLES POTTER, LL.B., of the Middle Temple and Lincoln's Inn, Barrister-at-Law. 1953. pp. ccxxviii and (with Index) 1346. London: Stevens & Sons, Ltd. £8 8s. net.

Hayward & Wright's Office of Magistrate. Ninth Edition. By JAMES WHITESIDE, Solicitor. 1953. pp. 261 and (Index) 40. London: Butterworth & Co. (Publishers), Ltd.; Shaw and Sons, Ltd. 17s. 6d. net.

Lewin on Trusts. Fifteenth Edition. Second Cumulative Supplement (to 1st January, 1953). By I. GOLDSMITH, of the Middle Temple, Barrister-at-Law. 1953. London: Sweet & Maxwell, Ltd.

Oyez Practice Notes No. 32: Weaving's Notes on Bankruptcy Practice and Procedure in County Courts. Second Edition. By THOMAS STANWORTH HUMPHREYS. 1953. pp. 48. London: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

The Company Director. His Functions, Powers and Duties. Prepared under the authority of the Council of the Institute of Directors by ALFRED READ, C.B.E., F.C.I.S., F.INST.D. 1953. pp. xv and (with Index) 228. London: Jordan and Sons, Ltd. 30s. net.

The "Oyez" Table of Legal Costs on a Sale of Land. Comprising Revised Scales of Solicitors' Remuneration, Mortgage Costs, Stamp Duties, Land Registry Fees, for Vendor and Purchaser. 1953. London: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

TALKING "SHOP"

WEDNESDAY, 4TH *March*, 1953

When, by the Finance Act, 1914, the Legislature replaced Settlement Estate Duty (S.E.D. for short) by Estate Duty (E.D.), it also introduced certain posthumous reliefs to be granted, in suitable cases, upon the first subsequent "occasion" on which E.D. should become payable. Broadly, under s. 14 (*b*) of that Act, a credit against the E.D. is allowed for the amount of S.E.D. previously paid. In addition, a claim may be made for a payment of simple interest on that amount at 3 per cent. from 15th August, 1914, up to the "occasion" on which E.D. first becomes payable. Neither of these reliefs is, of course, available if E.D. would have been payable under the pre-1914 law and the Act so provides.

It seems unlikely that the death of a surviving spouse would often give rise to a claim for reliefs under this section. As a rule the familiar "spouse exemption" would apply and in such cases there is no "occasion" for payment of E.D. and no relief is possible. Where, *per contra*, the surviving spouse was "competent to dispose," normally E.D. would have been payable under the pre-1914 system, so that, in conformity with the principle already mentioned, the case would not qualify for relief. Thus, the first "occasion" for payment of E.D. is likely to be the death of a child, and if we allow, as the Nathan Committee do, some thirty-five years to a generation, this may account for an apparent increase of late in "S.E.D. relief" cases.

Now, the system adopted by s. 14 (*b*), Finance Act, 1914, for deciding ownership of the S.E.D. interest was the same system as that once described in these Notes as inducing anachronism or tinkering with time. To quote the subsection, the interest—

> "shall be paid to the several persons or their representatives who would have been entitled to the income arising from that amount" [*viz.*, the amount of S.E.D.] "if that amount had on the 14th day of August 1914 been added to the capital of the settled property, and shall be divided amongst those persons or their representatives according to the several interests they would have had in that income."

In passing, I may observe that the section has already given rise to some litigation, though not, perhaps, as much as one might expect. For example, in *Re Booth* [1916] 1 Ch. 349, it was held that an annuitant's estate was entitled to a credit of S.E.D. interest proportionate to the "slice" of trust property passing on her death. But in *Re Grinlinton; Public Trustee* v. *Grinlinton* [1933] Ch. 344, the court awarded the interest to the residuary legatees "because in this case the persons whose income was reduced by payment of the S.E.D. were the persons entitled to the residuary estate and not the annuitant"—*per* Farwell, J., at p. 348.

THURSDAY, 5TH

Now, to follow up what I wrote yesterday, I have had under consideration a case in which the sequence of events, in digest, has been as follows:—

(1) Death of *A*, who by his will settled property on his widow *B* for life, remainder to secure an annuity of £*x* to his daughter *C* for life, remainder as to two-thirds to his grandson *D* absolutely and as to one-third to his granddaughter *E* for life. S.E.D. was paid on *A's* death.

(2) Death of *B* in 1921. No E.D. payable by virtue of the spouse exemption (see above).

(3) Appropriation in 1922 by the trustees of funds (amply sufficient at the time) to answer *C's* annuity. Transfer by the trustees of two-thirds of the residue to *D*; retention of the remaining one-third for *E* for life.

(4) (Some years later) deficiencies in *C's* annuity occurring for the first time and continuing year by year until her death in 1949. Credit of S.E.D. allowed on the C.1 account against E.D. payable on her death.

(5) Claims submitted by *B's* executors and by *D* and *E* for interest on S.E.D. relating respectively to the lifetime of *B* and to the rest of the interest period (*B's* death to *C's* death). No question arises upon the claim by *B's* executors.

On these facts the "official view" is that from the time of *B's* death the interest would have gone to make good, or at all events to abate, the deficiencies in *C's* annuity. The trustees contend that the deficiencies would have been the same, neither more nor less, because the notional addition of S.E.D. to the trust funds is supposed to take effect *as at 14th August*, 1914; thus (or so it is argued) their predecessors in office, making the appropriation in 1922, would have carried the "notional addition" into residue and not into the annuity fund.

The real point, as I see it, is whether these notional additions are to follow the trust instrument in a tram-like manner—perhaps a rather unfair way of putting the "official view"—or whether they are "bus-like" and subject to a *novus actus interveniens* (cf. the Tower Bridge incident). The *novus actus* in this case was the trustees' appropriation of funds in 1922. We may perhaps hear more of the principle underlying these matters because for one thing the interest—if it falls into a deceased estate—is liable to E.D. and for another it is free of tax. The case in question has been compromised, so I can only say that I favour the "bus," or as our purists would have it, the "omnibus" construction of this section.

WEEK-END SCHEDULE II PSYCHOLOGY TEST (OPTIONAL)

Assuming that—

(1) You were told that in a transaction concerning property to the value of £250,000—

(*a*) a surveyor would charge £3,807 10s.,
(*b*) a stockbroker £1,578,
(*c*) an insurance broker £3,750, and
(*d*) a solicitor under revised Sched. I £1,305

giving a mean average fee in these professions of £2,610;

(2) You had lately made (say) a settlement for your client which involved property to the same value and called for a specialist's advice;

(3) You had read the new order and J.L.R.R.'s articles in this journal;

(4) Taking the most dispassionate view of the matter of which you are capable, you tend to give it a high rating for all those imponderables under Sched. II, inasmuch as, *inter alia*, it demanded skill, specialised knowledge and dexterity on your part and preyed on your client's mind until it was completed and now, if given the chance, would prey upon yours (see under "responsibility," *infra*); and

(5) Being thus satisfied that your responsibility is certainly no less than that of a surveyor, stock-broker, insurance broker or solicitor acting under Sched. I (lucky irresponsible fellows);

Now would you (disregarding the crosses below)—

	Yes	*No*	*Don't know*
Ignore the fees mentioned?		×	
Charge the highest (or higher)?			×
Charge the lowest (or lower)?			×
Charge the mean average?			×
Charge the old Sched. II and add something for luck?		×	
Charge in hundreds?			×
Thousands?			×
Think of a fee and double it?	×		
When you consider what your client will stand, take away the number you first thought of? (Be honest.)	×		

The hypnosis that is likely to be induced by the sight of such a form in a form-filling age impels me to add that the crosses are all my own work and I hope they may save readers the trouble of posting their solutions to the Editor.

"ESCROW"

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

CONTRACT: AGRICULTURAL SEEDS: ILLEGALITY

Marles *v.* Philip Trant & Sons, Ltd.; Mackinnon, third party

Singleton, Denning and Hodson, L.JJ. 16th February, 1953

Appeal from Lynskey, J.

The defendants, seed merchants, bought from the third party, a farmer, spring wheat under a trade description, and sold some of it to the plaintiff. It was not spring wheat, and the plaintiff recovered damages accordingly against the merchants for breach of contract. The merchants claimed against the third party an indemnity for the loss so sustained and damages. Lynskey, J., held that they would have been entitled to succeed but for the fact that in their contract of sale to the plaintiff they had failed to specify the particulars prescribed by s. 1 of the Seeds Act, 1920, regarding purity, germination, etc., whereby their contract was illegal, so that they could not recover in respect of losses under it against the third party. The merchants appealed.

SINGLETON, L.J., said that it was conceded that the merchants were entitled to nominal damages. The judge had held that the resale of the wheat was an unlawful contract. But the mere omission of particulars required by the Act, though it might prevent the merchants from recovering the price from the plaintiff, did not make the contract of resale illegal; the plaintiff had raised no such question, and the merchants' loss had nothing to do with that omission. Further, the merchants did not need to refer to their contract with the plaintiff when claiming damages for breach of warranty from the third party. Unless (*a*) the resale was illegal, or (*b*) the damage resulted from the merchants' omission to comply with the Act, the third party could not rely on the omission to defeat the claim for breach of warranty.

DENNING, L.J., agreeing, said that if the resale had been unlawful, the plaintiff could not have sued. It was not the contract, but the merchants' performance of it that was unlawful; the result of that was that they could not enforce it. There was nothing unlawful in the contract with the third party, so that the merchants were entitled to damages. It was said that if the merchants wanted to prove the substantial damages which they claimed, they must rely on their own illegality, and their claim became *turpis causa*, but that expression lacked precise definition (*Beresford* v. *Royal Insurance Co., Ltd.* [1937] 2 K.B. 197), and a distinction must be drawn between an illegality which destroyed the cause of action and one which affected only the damages recoverable. So far as damages were concerned, the courts would not aid a man to get a benefit from his own crime, but a man could be guilty of a crime without moral culpability. A man deceived into unknowingly doing a criminal act had a cause of action against the deceiver (*Burrows* v. *Rhodes* [1899] 1 Q.B. 816). Even a motorist, whose negligence was so gross as to amount to manslaughter, could recover an indemnity from his insurers (*James* v. *British General Insurance Co., Ltd.* [1927] 2 K.B. 311). If public policy did not prevent recovery in those cases, it should not prevent recovery in the present case.

HODSON, L.J., dissented. Appeal allowed.

APPEARANCES: *Scott Cairns*, Q.C., and *F. S. Laskey* (*C. G. Metson & Co.*); *MacKenna*, Q.C., and *M. McGougan* (*Moon, Gilks & Moon*, for *Anstey & Thompson*, Exeter).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 564**

NATIONALISATION: ROAD HAULAGE AND COMPENSATION OF EMPLOYEES

R. *v.* Westminster Compensation Appeal Tribunal and Sell; *ex parte* Road Haulage Executive

Denning and Romer, L.JJ. 23rd February, 1953

Appeal from Divisional Court ([1952] W.N. 478).

When the road haulage industry was nationalised on 12th April, 1949, *S* was managing director of *H*, Ltd., a holding company controlling eight subsidiary road transport companies, under an agreement running until February, 1950. His employment was terminated by the Road Haulage Executive, and he claimed compensation under the Transferred Undertakings (Compensation to Employees) Regulations, 1950. *H*, Ltd., were not taken over by the executive, but by agreement *S* was treated as if he was the managing director of one large operating company, and his claim was referred to the respondent tribunal for assessment. The tribunal held that a "right to compensation" under para. 4 (1) (i) of Sched. II to the regulations included a right to claim damages for wrongful dismissal, and awarded compensation for the unexpired portion of the service agreement. The Divisional Court affirmed the award. The executive appealed. Schedule II to the regulations provided by para. 4 (1): "For the purpose of determining whether compensation should be awarded to any person for loss of emoluments, and, if so, the amount of that compensation, regard shall be had to—(i) the existence in his case of any right or expectation under customary practice to the payment of compensation in the event of discharge, or reduction in earnings or of worsening of conditions; (ii) the conditions upon which he held his appointment, including in particular its security of tenure, whether by law or by practice; . . . (2) Compensation under this paragraph shall be awarded as follows—(i) in the case of an applicant who has any such right or expectation as is referred to in sub-paragraph (1) (i) of this paragraph—(*a*) if the right or expectation is to the payment of compensation until normal maximum retiring age, in accordance with paragraph 5 (1) of this schedule; (*b*) if the right or expectation is to the payment of compensation otherwise than until normal maximum retiring age, in accordance with paragraph 5 (2) of this schedule; (ii) in the case of an applicant who has no such right or expectation as is referred to in sub-paragraph (1) (i) of this paragraph, in accordance with paragraph 5 (3) of this schedule; and shall be paid at intervals equivalent to those

at which the emoluments of the applicant were previously paid." By para. 17: "There shall be set off against the interim compensation payment or the compensation award made to a claimant any payments for breach of contract to which he may be entitled arising out of any service agreement or contract."

DENNING, L.J., said that the persons entitled to be compensated under the rules were divided into three categories by para. 4 (2); the first did not come into question; *S* claimed to be in the second; the executive contended that he was in the third. The second category consisted of those who had "the right or expectation to the payment of compensation otherwise than until the normal retiring age"; the third category consisted of those who had no such rights or expectations as those in the first two categories; and by para. 5 (3) they were entitled to compensation for from thirteen to twenty-six weeks. The executive contended that the second category included only those men who, under their previous employment, in the event of discharge, would have received a definite sum for the loss of employment. It was contended for *S* that it included all men who, under their previous employment, would have had a legal right to damages for wrongful dismissal, if dismissed without notice, so that "compensation in the event of discharge" included unascertainable damages for wrongful dismissal. If that contention were right, no discharged employee could come into the third category. Moreover, in assessing compensation, the authority was to have regard, in para. 4 (1) (i), to a right to "compensation in the event of discharge," and in para. 4 (1) (ii), to the "conditions of appointment, including in particular its security of tenure, whether by law or practice." A right to damages for wrongful dismissal clearly came under para. 4 (1) (ii). Again, para. 17 showed by its language that payments for a breach of contract were not regarded as "compensation." Accordingly, "compensation in the event of discharge" had reference to lawful discharge, and did not include damages for wrongful dismissal. The respondent tribunal had decided otherwise, so that there was an error of law on the face of their decision. The appeal should be allowed.

ROMER, L.J., agreed. Appeal allowed. Leave to appeal.

APPEARANCES: *Sir F. Soskice*, Q.C., *T. F. Southall* and *R. Day* (*M. H. B. Gilmour*); *L. Caplan* (*Carr, Sandelson & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 506

CHANCERY DIVISION

COSTS: REFRESHER: TIME SPENT IN NEGOTIATING A SETTLEMENT

Lawson *v.* Tiger

Vaisey, J. 24th February, 1953

Summons to review taxation.

R.S.C., Ord. 65, r. 27 (48), provides: "As to refresher fees, when any cause or matter is to be tried or heard upon *viva voce* evidence in open court, if the total time occupied by the trial whether wholly on the first day or partly on that day and partly on any subsequent day or days, shall exceed the period of five hours, the Taxing Master may in respect of the excess allow for every complete period of five hours (if any) and for any less period not included in such complete period the following fees . . ." In computing the time occupied by an action for the purpose of refresher fees, the Taxing Master included time spent in negotiating a settlement in the precincts of the court—either in the court itself, in the absence of the judge, or in the corridor or in the judge's private room. The defendant, who objected, took out a summons to review the taxation.

VAISEY, J., said that *Wright* v. *Bennett* [1947] 1 K.B. 828, which had been cited, had no bearing on the present question, as it dealt with the time occupied by the mid-day adjournment. So long as the judge was in court or in his private room, and the registrar was in attendance, and no other case was being tried or attended to by the judge, the whole of the time in ordinary court hours might be said to be occupied by the trial, even if evidence or arguments were not proceeding. The Taxing Master had a discretion to allow the whole, or such part as he thought proper, of the time so spent. The Taxing Master had proceeded on the right footing, and there were no grounds for interfering with his conclusion.

Order accordingly.

APPEARANCES: *G. Dare* (*Kennedy, Genese & Co.*); *Charles Lawson* (*Thornton, Lynne & Lawson*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 503

BANKRUPTCY: APPEAL: NON-COMPLIANCE WITH RULES: WHETHER GOOD CAUSE

***In re* A Debtor (No. 36 of 1952); *ex parte* The Debtor *v.* J. T. Richardson and Others**

Harman and Danckwerts, JJ. 2nd March, 1953

A firm of solicitors in Manchester, by way of appeal from a receiving order made there on a debtor on 26th January, 1953, sent a notice of appeal to London to be entered; and, in purported compliance with r. 130 of the Bankruptcy Rules, 1952, sent a copy in due time to the registrar of the county court. The notice was not entered in London, as it was incorrect in form. A second notice in proper form was sent to London and entered. The solicitors failed to serve in time a copy of the second notice on the registrar at Manchester as they assumed that the first notice would be entered in London. At the hearing of the appeal from the receiving order, counsel for the creditors took a preliminary objection that the copy of the notice of appeal had not been served on the registrar within the time provided by r. 130 and that it could not therefore be entertained by the court. Rule 130 of the Bankruptcy Rules, 1952, provides: "Within seven days from the entry of the appeal a copy of the notice of appeal shall be sent by the appellant to the registrar of the court appealed from . . ." Rule 389 provides: "The court may, for good cause shown, extend or abridge the time appointed by these rules . . ."

HARMAN, J., said that, although the service of a copy of the notice of appeal on the registrar was out of time, the court was enabled to waive that by extending the time under r. 389 of the Bankruptcy Rules, 1952. There had been a notice, albeit an incorrect one, on the registrar's file, anterior in time to the entry of the present notice of appeal, notifying the public, or anybody who wished to search, that an appeal was pending. He could not imagine, therefore, that any harm could have ensued from this irregularity, but nevertheless there was authority of the Court of Appeal, which was binding on them, that it was necessary to comply with that rule unless there was good reason for absolving the appellant from it (see *In re Muscovitch* [1939] Ch. 694). That was a decision under the Bankruptcy Rules, 1915, which differed materially from the rules of 1952. Rule 389 omitted the words "special circumstances," so that an appellant could now have his time extended without proving special circumstances provided that he could show good cause. He would assume that the two things were different, but he could not think that the mistake by the solicitors in Manchester, who thought that the first notice of appeal which they sent to London would be filed, and omitted to find out that that had not been filed, was a good cause within the meaning of r. 389. Notwithstanding therefore the relaxation brought about by the omission of the words "special circumstances," he was unable to extend the time, and the objection must be upheld.

DANCKWERTS, J., agreed. He said that he did not wish to be taken to agree that no harm could have been done; he thought that the wrong form of notice might be misleading.

APPEARANCES: *P. A. Ferns* (*L. Bingham* for *James Chapman and Co.*, Manchester); *Peter Foster* (*Rotherham & Co.* for *Pearsons & Ward*, York).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [2 W.L.R. 561

COMPANY: WINDING UP: MEANING OF "MEMBER"

***In re* Consolidated Goldfields of New Zealand, Ltd.**

Roxburgh, J. 3rd March, 1953

Adjourned summons.

The Companies Act, 1948, provides by s. 212 (1): "In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities . . . and for the adjustment of the rights of the contributories among themselves, subject to . . . the following qualification:— . . . (*g*) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves." The liquidator of a company took out a summons to which one of the respondents was a past member, and the other an unsecured creditor of the company. The past member claimed to be a creditor for £65 due to her by way of

unclaimed dividends declared while she was still a member, and by the summons the liquidator asked whether, having regard to s. 212, he could treat that sum as a debt ranking for dividend in competition with the unsecured debts of the company due to persons otherwise than in their capacity as members or past members of the company.

ROXBURGH, J., said that, at first blush, it looked as if "member" in s. 212 meant exactly what it said, and did not include a past member; but when reference was made to *In re Anglesea Colliery Co.* (1866), L.R. 1 Ch. 555, that view was shown to be wrong. That case dealt with provisions of the Companies Act, 1862, which did not differ materially from those now subsisting, and showed that all present and past members of a company were contributories. It was true that Maugham, J., and the Court of Appeal had decided otherwise in *In re Aidall, Ltd.* [1933] Ch. 323, a case which was not distinguishable; but the *Anglesea* case (*supra*) was not cited, and, with respect, the later case seemed to have been decided *per incuriam*. Moreover, when a number of the other sub-paragraphs constituting "the following qualifications" were examined, it would be seen that in some cases "member" must include a past member. Accordingly, the liquidator was not at liberty to treat a debt due to a past member in respect of unclaimed dividends as a debt ranking in competition with those of ordinary unsecured creditors.

Order accordingly.

APPEARANCES: *J. A. Wolfe; L. H. L. Cohen; G. T. Hesketh* (*Birkbeck, Julius, Coburn & Broad*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 584

QUEEN'S BENCH DIVISION

CARRIAGE BY AIR: DEVIATION: LOSS OF GOODS: JURISDICTION

Rotterdamsche Bank N.V. and Another *v.* British Overseas Airways Corporation and Aden Airways, Ltd.

Pilcher, J. 18th February, 1953

Summons to set aside writ.

The plaintiff *R*, a bank, by a contract of carriage by air, consigned from Rotterdam to the plaintiff *B*, another bank, a consignment of 2,000 sovereigns from Rotterdam to Djibouti, in French Somaliland. The consignment note provided that the consignment was to be carried by the Dutch airline K.L.M. from Amsterdam to Cairo, thence by the defendants B.O.A.C. to Asmara, and then by another service of B.O.A.C. to Djibouti. The gold arrived at Cairo by K.L.M., and was then loaded on to an aircraft of the second defendants, A.A., Ltd., a subsidiary of B.O.A.C. That aircraft landed at Asmara, but by some negligence or oversight took off for and landed at Aden with the gold still on board. At Aden the gold was stolen while still in the custody of A.A., Ltd. A writ having been issued, A.A., Ltd., a company registered in India, whose principal place of business was Aden, moved to set it aside on the ground that, under the provisions of the Carriage by Air Act, 1932, and of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, an English court had no jurisdiction to entertain the action against them.

PILCHER, J., said that art. 28 of the Convention provided by para. (1) that "an action for damages must be brought . . . either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business . . . or before the court having jurisdiction at the place of destination . . ." By art. 30 (1): "In the case of carriage to be performed by . . . successive carriers . . . each carrier who accepts . . . goods is subjected to the rules set out in this Convention and is deemed to be one of the contracting parties to the contract of carriage . . ." The terms of the consignment note, providing for the routing and transhipment of the gold, were such as to bring the Convention into effect, and the loss of the gold occurred upon an international carriage within the terms of the Convention; so that art. 28 (1) took effect and ousted the jurisdiction of the High Court from entertaining the plaintiffs' claim against the second defendants. Judgment for the second defendants.

APPEARANCES: *M. Kerr* (*Ince & Co.*); *R. Winn* (*Beaumont and Son*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 493

CRIMINAL LAW: CONVICTION AFTER PLEA OF GUILTY BEFORE MAGISTRATE: NO JURISDICTION TO REMAND FOR REHEARING

R. *v.* Campbell; *ex parte* Hoy

Lord Goddard, C.J., Byrne and Gerrard, JJ.
23rd February, 1953

Application for prohibition.

The defendant was charged before a metropolitan magistrate with harbouring 262 pairs of uncustomed nylon stockings and elected to be tried summarily. After the charge had been explained, she pleaded guilty. The magistrate convicted her and imposed a sentence of four months' imprisonment. Later in the day, on the application of her solicitor, the magistrate allowed the plea to be changed to not guilty and remanded the defendant on bail to appear before another magistrate. Before the second magistrate the prosecutor contended that the case had been heard and determined and that there was no jurisdiction to rehear it. The second magistrate again remanded the defendant so that the submission could be considered by the first magistrate. The prosecutor's submission was repeated before the first magistrate, but that magistrate refused to sign a committal warrant. The prosecutor then moved the Divisional Court for an order to prohibit the first magistrate from further proceeding with the charge otherwise than by issuing a committal warrant.

LORD GODDARD, C.J., said that the plea of guilty had been quite unequivocal. When a court of summary jurisdiction sat to hear and determine a case, the magistrate was sitting in exactly the same way as a judge with a jury. Although such a court was not a court of record, after a conviction there the defendant could never again be put on trial for the offence charged, and if so charged again could plead *autrefois convict* (*R.* v. *Manchester Justices; ex parte Lever* [1937] 2 K.B. 96); and an announcement in court that there was a conviction amounted to a conviction (*R.* v. *Sheridan* [1937] 1 K.B. 223). The magistrate, in purporting to remand the defendant on bail to appear before another magistrate, had exceeded her jurisdiction and the order of prohibition must lie.

BYRNE and GERRARD, JJ., agreed. Application granted.

APPEARANCES: *J. P. Ashworth* and *R. J. Parker* (*Solicitor for Customs and Excise*); *J. C. Mathew* (*Hawker & Wheatley*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 578

TRANSPORT FOR SCHOOLCHILDREN LIVING MORE THAN THREE MILES FROM SCHOOL: LIABILITY OF LOCAL EDUCATION AUTHORITY

Surrey County Council *v.* Ministry of Education

Lynskey, J. 23rd February, 1953

Originating summons.

A local education authority, who had arranged for the transport to school of children living more than three miles from school either by vehicles provided by themselves or by means of paying the cost of transport on public conveyances, proposed that the full cost of transport by public conveyance to and from school should no longer be paid for secondary school children but that expenditure should be limited to partial payment of fares in such a way that no child had a longer distance than three miles to and three miles from school to travel unaided, and that parents of such children living more than three miles from their school should be paid a sum equal to the cost of the fare necessary to bring the child within the three-mile limit. The authority were informed that the Minister of Education had been advised that that proposal was contrary to the provisions of the Education Act, 1944, and that therefore the Minister could not approve it. Section 39 (1) of the Education Act, 1944, provides that if a child of compulsory school age fails to attend school regularly his parents shall be guilty of an offence, but by subs. (2) (*c*) the child shall not be deemed to have failed to attend regularly if the parent proves that the school is not within walking distance of the child's home and "that no suitable arrangements have been made by the local education authority . . . for his transport to and from the school." By s. 55: "(1) A local education authority shall make such arrangements for the provision of transport and otherwise as they consider necessary . . . for the purpose of facilitating the attendance of pupils at schools . . . free of charge. (2) A local education authority

may pay the whole or . . . part . . . of the reasonable travelling expenses of any pupil . . . for whose transport no arrangements are made under this section." The council took out an originating summons to have determined (1) whether on the true construction of s. 55 of the Education Act, 1944, they were authorised to make the arrangements comprised in their proposal; and (2) whether such arrangements were suitable arrangements within the meaning of s. 39 (2) (*c*) of the Act for the transport of a child to and from the school at which he was a registered pupil.

LYNSKEY, J., said that, in his view, subs. (1) of s. 55 related to the actual provision of transport as such, either with hired vehicles or the council's own vehicles or by other means. The council contended that the scheme was not for transport in the sense required by subs. (1), but was a scheme made under subs. (2) for the provision of the cost of the child using public transport, and that they were providing payment in respect of the child's transport which enabled the child to reach the school by walking less than three miles. The matter turned upon the interpretation of s. 39 (2) (*c*) and (5); suitable arrangements for transport in that connection meant transport to and from the child's home to the school, and provision had to be made for transport to and from the school and the home. That was the obligation as to transport; he was satisfied that the substitute for transport in the shape of payment for public transport must be of the same character and must provide for payment of the sum which would cover the cost of taking the child by public transport from a point reasonably near his home to a point reasonably near the school. The council were not authorised to make the arrangements they proposed nor were such arrangements, as a matter of law, suitable arrangements within the meaning of s. 39 (2) (*c*). Order accordingly.

APPEARANCES: *Harold Williams*, Q.C., and *S. B. R. Cooke* (*Wyatt & Co.* for *W. W. Ruff*); *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 516**

LANDLORD AND TENANT: OPTION TO TENANT TO RENEW LEASE AT ABOVE STATUTORY RENT: WHETHER EXERCISABLE

Mauray *v.* Durley Chine (Investments), Ltd.

Gerrard, J. 24th February, 1953

Action.

The defendants leased to the plaintiff a flat for seven years from 24th June, 1946, at a rent of £525 per annum, including certain services, and also granted him an option, to be exercised by June, 1952, for a new lease as from June, 1953, on the same terms. The plaintiff applied in January, 1950, to a rent tribunal under the Furnished Houses (Rent Control) Act, 1946, for a reduction of rent, and the tribunal reduced the rent to £425. In December, 1951, the plaintiff exercised the option. The defendants refused to grant the new lease, alleging that as a lower rent was entered in the register required to be kept under the Act they were prohibited from requiring or receiving a rent of £525 as provided by the option, so that the option was null and void. The Act provides by s. 4 (1) that after the tribunal has made an order: "Where the rent payable for any premises is entered on the register under the provisions of this Act, it shall not be lawful to require or receive" by way of rent "payment of any sum in excess of the rent so entered." By s. 9: "A person who requires or receives any payment or any consideration in contravention of s. 4 of this Act shall be guilty of an offence."

GERRARD, J., said that the defendants contended that to grant a new lease at a rent of £525 would be a "requirement" within the Act for the plaintiff to pay that sum as rent, which would be illegal. The plaintiff contended that, as the tribunal had power on application being made to increase the rent, it could not be held at the present date that a requirement of £525 as rent in the following June would be unlawful, as the tribunal might by then have increased it to that sum or more; that contention appeared to be right, and the court ought not now to make an assumption of illegality. That assumed that a new lease in the form provided by the option involved that the defendants "required" rent within the meaning of the Act. The Act made it unlawful to "require" any sum in excess of that entered on the register. But a mere covenant to pay an excess rent was not a "requirement" within the Act, though any attempt to enforce it would be to "require" an excess rent. The covenant was not such as to render the lease void, and the plaintiff was entitled to a declaration that the option was valid.

Judgment for the plaintiff.

APPEARANCES: *F. W. Beney*, Q.C., and *P. Bristow* (*Jacobson, Ridley & Co.*); *C. Salmon*, Q.C., and *J. T. Plume* (*Evans Baker & Co.*)

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 524**

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: JUSTICES: QUANTUM: EARNING CAPACITY

Klucinski *v.* Klucinski

Lord Merriman, P., and Collingwood, J. 13th February, 1953

Appeal from justices for the borough of Mansfield.

A husband was found guilty on his own admission of desertion and adultery, and was ordered to pay 30s. a week for the wife and 15s. a week for the child of the marriage, on 22nd October, 1952. A further child was born in January, 1953, in respect of whom an order was made for 20s. a week under the Guardianship of Infants Acts. The husband's net weekly wage from his employment at a colliery, after deducting income tax, etc., between July, 1952, and the hearing of the summons, was between £11 8s. and £12 16s. Those figures included pay for overtime; the basic wage was between £9 and £10 a week. The wife appealed against the amount of maintenance ordered for herself. The justices stated in their reasons: Experience in dealing with such cases has shown us that if we base the amount of our order on such figures (i.e., including overtime) the man more often than not stops working overtime as he feels he has no longer any incentive to do so.

LORD MERRIMAN, P., said that the justices had misdirected themselves in law; in such a connection, when assessing the amount, justices ought to take into account, just as they (their lordships) must do in their court, not merely actual earnings, but earning capacity. Such earning capacity included the amount which a man was capable of earning from overtime.

COLLINGWOOD, J., concurred

[In the special circumstances, which included the change in the position since the original order, their lordships, however, dismissed the appeal, intimating that the obvious solution would be for the wife to apply for a revision of the amount. If she were to do so, they (their lordships) hoped that the justices would take note of the view expressed that it was wrong to eliminate overtime pay from their calculations.]

Appeal dismissed in the special circumstances.

APPEARANCES: *A. B. Hollis* (*John Syms* with him) (*Peacock and Goddard*, for *Rothera, Sons and Langham*, Nottingham).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 522**

CORRECTION

We are asked to make it clear that in *Loudan* v. *Ryder* (reported *ante*, p. 170) Messrs. Hardman, Phillips & Mann acted for the respondent. The appearances should therefore read: *G. Beyfus*, Q.C., and *J. C. Lawrence* (*Adler & Perowne*); *W. A. Fearnley-Whittingstall*, Q.C., and *C. H. Duveen* (*Hardman, Phillips & Mann*).

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Solicitors' Remuneration Order, 1953

Sir,—The article on costs headed "Certification and Taxation" in your issue for the 7th March is misleading inasmuch as it suggests that by electing to charge costs under Sched. II solicitors could circumvent local minimum scales. Most (if not all) minimum scale rules operated by local Law Societies contain a specific provision that a solicitor shall not elect to charge under Sched. II where he could have made a scale charge unless he is satisfied that the sum of his bill will be equal to or exceed the minimum scale fee.

T. G. LUND,
Secretary.

Law Society's Hall,
Chancery Lane,
London, W.C.2.

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Royal Titles Bill [H.C.] [4th March.
Town and Country Planning Bill [H.C.] [3rd March.

Read Third Time :—

Therapeutic Substances (Prevention of Misuse) Bill [H.L.] [3rd March.

In Committee :—

Hospital Endowments (Scotland) Bill [H.L.] [5th March.

B. Questions

Property Damage by Jet Aircraft

Lord Teviot asked whether the Government would compensate persons whose property was injuriously affected by the building of aerodromes for use by heavy jet-propelled aircraft, for loss of amenities, depreciation in value of their property, and other like injury? Lord Saltoun said he knew a market gardener who had a great deal of glass on which his living depended, who had had the whole of it smashed by the starting up of one jet aeroplane.

The Secretary of State for Air said that the principles by which the State was bound did not permit payment of compensation in such cases. The householder concerned had, however, his fullest sympathy. After further questioning, the Minister said he would consider the case mentioned by Lord Saltoun. [3rd March.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Epsom and Walton Downs Regulation (Amendment) Bill [H.C.] [2nd March.

To amend the Epsom and Walton Downs Regulation Act, 1936, as to the charges to be made by the Epsom Grand Stand Association Limited to bookmakers and their assistants for admission to a prescribed part of Epsom Downs and Walton Downs.

Read Second Time :—

Local Government Superannuation Bill [H.C.] [3rd March.

B. Questions

The Legal Aid Scheme

The Attorney-General stated that the Report of the Legal Aid Advisory Committee which had recently been laid before Parliament gave, on the whole, a favourable judgment of the scheme. The Lord Chancellor agreed with their view but thought that there was room for improvement. He was aware of the fact that s. 2 (2) of the Legal Aid and Advice Act limited an assisted person's liability for costs to what he could reasonably pay in all the circumstances. This provision was based on a recommendation of the Rushcliffe Committee, and had been fully discussed in Parliament, and no present amendment of this provision was contemplated.

Mr. E. Fletcher pointed out that this position gave an assisted person no inducement to settle, and conflicted with the basic principle of equality before the law. Many of these anomalies would be removed if the sections of the Act relating to legal advice were brought into force. The Attorney-General said he could make no statement of any kind, but what Mr. Fletcher had said would be considered. [2nd March.

Civil Liability (Damage by Animals)

The Attorney-General said that the recommendations of the Report of the Committee on the Law of Civil Liability for Damage by Animals would require a lot of consideration. [2nd March.

Royal Commission on Marriage and Divorce

The Attorney-General said he was not able to say when the Commission would report. The report would not be available in the near future owing to the large body of evidence which had been tendered. [2nd March.

Statute Law Committee

The Attorney-General issued the following statement on the work of this Committee :—

"The Committee's functions concern consolidation and statutory publications. Work on consolidation has proceeded satisfactorily in general, but some of the work has suffered delay in consequence of need to await the passing of amending legislation. Five consolidation Bills have been passed, relating respectively to Customs and Excise, Magistrates Courts, Costs in Criminal Cases, Prisons (England and Wales), and Prisons (Scotland). Two Bills are now before one or other House, relating respectively to the Post Office, and Births and Deaths Registration. Bills to consolidate the enactments relating to the Auxiliary Forces and to the Registration Service are likely to be introduced very shortly. Work is in hand on Bills, which it is hoped to introduce during the current session, to consolidate the enactments relating to Licensing for the sale of Intoxicating Liquors, the Medical Acts, the Solicitors Acts, and the Summary Jurisdiction (Scotland) Acts.

Work is also in hand on other measures which may be completed in time for introduction of Bills during the current session, but of which I would prefer not to speak with greater certainty in this statement. In the case of one important project, to consolidate the Electricity Supply Acts, a suspension of work has become necessary after much had been done, in view of the need referred to above to await the passing of amending legislation; and the position is similar as to a consolidation of the Supreme Court of Judicature Acts, having regard to prospective large-scale amendment of the Rules of the Supreme Court.

The work of the Statutory Publications Office has proceeded for the most part in a normal manner not calling for particular comment, but it has been of somewhat exceptional volume in consequence of the numerous alterations entailed by the extensive range of the consolidations mentioned at the beginning of this statement. Some success has attended the efforts continuously made to secure earlier issue of periodical publications. With a view to testing demand for annual publication of the 'Guide to Government Orders,' experimental publication both in 1952 and in the present year has been arranged. A sub-committee of the Statute Law Committee will review this experiment, and other matters relating to the issue and sale of the Guide and of other publications for which the Committee is responsible." [2nd March.

Pensions Appeal Tribunals (Medical Witnesses)

Mr. Hale said that some applicants for disablement benefit were unable, through poverty, to secure medical witnesses to attend the hearing on their behalf. The panel doctor would tell the patient: "Who is going to pay? A reasonable sum will do." And there the matter ended. Mr. Hector Hughes said he had particulars of such cases, the only result of which was to defeat justice.

The Attorney-General said he was informed that the Pensions Appeal Tribunals knew of no such case, but he would certainly discuss the matter with Mr. Hale and Mr. Hughes. [2nd March.

Judges' Clerks (Pensions Legislation)

The Attorney-General stated that the Government proposed to introduce a Bill to provide pensions for the clerks to Her Majesty's judges. [2nd March.

Registered Land (Transfers)

The Attorney-General stated that during the twelve months ended 31st December, 1952, there were 65,167 transfers of registered land. Information as to the number of such cases in which solicitors acted for the vendor and the purchaser was not available. Applications for registration were presented by the purchaser and accordingly, H.M. Land Registry was not normally aware whether a solicitor was acting for the vendor. It was estimated that the number of transactions where a solicitor did not act for the purchaser did not exceed 200 in the twelve months ended 31st December, 1952. [4th March.

ABANDONED AND LOST CHILDREN

The HOME SECRETARY stated that between November, 1950, and November, 1951, 1,364 children were received into the care of local authorities under the Children Act, 1948, as abandoned or lost. There were in 1951 three prosecutions and convictions for abandonment of children under s. 27 of the Offences Against the Person Act, 1861. Separate figures of prosecutions for abandonment of children under s. 1 of the Children and Young Persons Act, 1933, were not available. It was not a criminal offence merely to abandon a child, but only where this was done in circumstances likely to cause unnecessary suffering or injury to health. [5th March.

SHOP WINDOWS (QUESTIONABLE ADVERTISEMENTS)

Sir DAVID MAXWELL FYFE said there was no power to prevent the display of advertisements by women giving name, address or telephone number and inviting people to communicate with them, if they were not obscene and did not infringe the criminal law, but the police did what they could to secure the withdrawal of the more questionable advertisements. In a number of cases police kept watch and had in consequence brought successful prosecutions. [5th March.

ACCOMMODATION ADDRESSES (REGISTRATION)

The HOME SECRETARY said that 108 persons providing accommodation addresses were registered with the Metropolitan Police. He would do his best to see that these persons who received and forwarded postal packets were reputable and used the premises only for reputable purposes. [5th March.

PUBLIC INQUIRIES (LAND DEVELOPMENT)

The MINISTER OF AGRICULTURE, asked why representatives of his department were not available to give evidence with regard to objections to the use of agricultural land for development at relevant public inquiries, said it was the practice for representatives of one Government department not to give evidence at an inquiry held by another department. [5th March.

STATUTORY INSTRUMENTS

Bacon Order, 1953. (S.I. 1953 No. 284.) 8d.
Coal Distribution (Amendment) Order, 1953. (S.I. 1953 No. 286.)
County of Berks (Electoral Divisions) Order, 1953. (S.I. 1953 No. 283.)
Import Duties (Drawback) (No. 3) Order, 1953. (S.I. 1953 No. 279.)
Inverness Corporation Water Order, 1953. (S.I. 1953 No. 321 (S. 30).)
Jewellery and Silverware Council (Dissolution) Order, 1953. (S.I. 1953 No. 287.) 6d.
Lothians River Purification Board (Area and Establishment) Order, 1953. (S.I. 1953 No. 320 (S. 29).) 6d.
Lunesdale Rural Water Order, 1953. (S.I. 1953 No. 310.)
Marriages Validity (Independent Chapel, Beaminster) Order, 1952. (S.I. 1953 No. 295.)
Marriages Validity (Millbridge Baptist Evangelical Mission, Minehead) Order, 1952. (S.I. 1953 No. 296.)
National Health Service (Remission of Dental Charges) Order, 1953. (S.I. 1953 No. 285.)
Oxford-Northampton-Stamford-Market Deeping Trunk Road (Stanion Diversion) Order, 1953. (S.I. 1953 No. 278.)
Preston-Blackpool Trunk Road (Blackpool Road, Preston) Order, 1953. (S.I. 1953 No. 305.)
Public Health (Infectious Diseases) Regulations, 1953. (S.I. 1953 No. 299.) 6d.
Ready-Made and Wholesale Bespoke Tailoring Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 297.) 8d.
Rope, Twine and Net Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1953. (S.I. 1953 No. 280.) 8d.
Shirtmaking Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 306.) 6d.
Solway River Purification Board (Area and Establishment) Order, 1953. (S.I. 1953 No. 314 (S. 27).) 6d.
Stopping up of Highways (Hampshire) (No. 1) Order, 1953. (S.I. 1953 No. 302.)
Stopping up of Highways (Lancashire) (No. 2) Order, 1953. (S.I. 1953 No. 304.)
Stopping up of Highways (Middlesex) (No. 1) Order, 1953. (S.I. 1953 No. 303.)
Stopping up of Highways (Wiltshire) (No. 1) Order, 1953. (S.I. 1953 No. 277.)
Tweed River Purification Board (Area and Establishment) Order, 1953. (S.I. 1953 No. 319 (S. 28).) 6d.
Wholesale Mantle and Costume Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 298.) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Personal Notes

The retirement of Mr. Austen Whetham, Bridport Magistrates' Clerk since 1917, has been announced.

Lt.-Col. G. W. K. Butcher, solicitor, of Bingley, was elected Vice-President of the Craven Tenant Farmers' Association on 26th February.

Miscellaneous

SUPREME COURT

CORONATION 1953

Notice is hereby given that there will be no sittings of Her Majesty's Judges at the Royal Courts of Justice on Coronation Day, the 2nd June, 1953, or on the 3rd June, 1953.

The offices of the Supreme Court will be closed on both days, with the exception of the Personal Application Department of the Principal Probate Registry and the District Probate Registries, which will be closed on Coronation Day only.

This notice does not apply to the District Registries of the High Court, each of which will be closed on the same day or days as the local County Court Office.

DEVELOPMENT PLANS

COUNTY OF NORTHUMBERLAND DEVELOPMENT PLAN

The above development plan was on 28th February, 1953, submitted to the Minister of Housing and Local Government for approval. It comprises the whole of the Administrative County of Northumberland. Certified copies of the plan as submitted for approval may be inspected at the County Hall, Newcastle-upon-Tyne, 1, and at the offices of each municipal borough and urban and rural district council in the administrative county, from 9 a.m. to 5 p.m. (Saturdays, 9 a.m. to 12 noon). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 18th April, 1953, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Northumberland County Council at the office of the Clerk of the County Council, County Hall, Newcastle-upon-Tyne, 1, and will then be entitled to receive notice of the eventual approval of the plan.

CITY AND COUNTY OF NORWICH DEVELOPMENT PLAN

The above development plan was on 27th February, 1953, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the City and County of Norwich. A certified copy of the plan as submitted for approval may be inspected at the City Engineer's Office at the City Hall, Norwich, from 9.30 a.m. to 5 p.m. (Saturdays, 9.30 a.m. to 12 noon). Any objection or representation with reference to the plan may be made in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 24th April, 1953, and should state the grounds on which it is made. Persons making any objection or representation may register their names and addresses with the Town Clerk, City Hall, Norwich, and will then be entitled to receive notice of the eventual approval of the plan.

CRIMINAL APPEAL: POWER TO ORDER NEW TRIAL

It is announced that the Departmental Committee set up under the chairmanship of Lord Tucker by the Lord Chancellor and the Home Secretary "to consider and report whether the Court of Criminal Appeal and the House of Lords should be empowered to order a new trial of a convicted person who has appealed to the Court of Criminal Appeal, or whose case has been referred to the court by the Secretary of State, and, if so, in what circumstances and subject to what safeguards," has now made a start on the task before it and is ready to consider evidence. Any person or body wishing to submit evidence should communicate as soon as possible with Mr. R. A. James, Home Office, Whitehall, S.W.1.

GENERAL COUNCIL OF THE BAR

SEATS FOR CORONATION PROCESSION

One hundred and forty-four seats (twenty covered and one hundred and twenty-four uncovered) on the route of the Coronation Procession have been allotted to the Council with authority to distribute them amongst members of the Bar in such manner as the Council considers appropriate. The price of the seats (the whole amount of which is payable to the Government) will be £6 for a covered and £4 for an uncovered seat.

The seats will be on Government stands either in the Mall, Hyde Park or Piccadilly.

The service in Westminster Abbey will be broadcast to the stands. Light refreshments will be obtainable on payment from buffets.

The Council has accordingly decided to conduct a ballot for the available seats and any member of the Bar who has paid his current subscription to the Council and who has not been allotted seats from any other official source may apply to have his name included in the ballot.

The following conditions will apply:—

1. Each successful applicant will be allotted two seats.

2. (*a*) A successful applicant who proposes to use one ticket himself, is at liberty to give his remaining ticket to a relation or friend, but a successful applicant who does not propose to use either ticket himself is only entitled to give his tickets to members of his immediate family.

(*b*) Successful applicants who find that they are not able or do not propose to use their tickets as in (*a*) above, must return them to the Council. Tickets may not be resold.

3. Those who wish to apply for tickets must notify the Secretary of the Council (2 Stone Buildings, Lincoln's Inn, W.C.2) in writing not later than Friday, 27th March, 1953, and at the same time indicate their preference for covered or uncovered seats.

4. Successful applicants will be informed as soon after the ballot has taken place as possible. They will be asked to send at once to the Council a cheque for the appropriate amount and the names of those who are to use the tickets. Money will not be returnable if the ceremony is cancelled or postponed or if the tickets are not used.

At Bradford Town Hall, on 4th March, Cassels, J., addressed a private gathering of 100 Bradford and West Riding magistrates on the work of magistrates' courts. He was later entertained to dinner at the Victoria Hotel, Bradford.

At The Law Society's Preliminary Examination held on 2nd, 3rd, 4th and 5th February, twenty-five candidates out of seventy-six were successful.

The Council of the Royal Society of Arts have given notice that the next award of the Swiney Prize for a work on jurisprudence will be made in January, 1954, the 110th anniversary of the testator's death. Dr. Swiney died in 1844, and in his will he left a sum of money to the Royal Society of Arts for the purpose of presenting a prize, on every fifth anniversary of his death, to the author of the best published work on jurisprudence. The prize is a cup of the value of £100 and money to the same amount. The award is made by a joint Committee of the Royal Society of Arts and the Royal College of Physicians, which appoints special adjudicators. The prize is offered alternately for medical and general jurisprudence, but if at any time the Committee is unable to find a work of sufficient merit in the class whose turn it is to receive the award, it is at liberty to recommend a book belonging to the other class. On the last occasion of the award (1949) the prize was awarded for medical jurisprudence. It will, therefore, be offered on the present occasion for general jurisprudence. Any person desiring to submit a work in competition, or to recommend any work for the consideration of the judges, should send it to the Secretary of the Society not later than 30th November, 1953.

Wills and Bequests

Mr. C. R. Burr, solicitor, of New Malden, Surrey, left £22,024 (£18,219 net).

Mr. A. Tabrum, solicitor, of Cambridge, left £30,180 (£30,130 net).

OBITUARY

MR. F. O. ARNOLD

Mr. Frederick Octavius Arnold, solicitor, of Spring Gardens, Manchester, has died at the age of 70. He was called to the Bar in 1910 but was admitted a solicitor in 1922. He was deputy coroner for Manchester for two years and was chairman of Hole Urban District Council. He was one of the trustees of the Manchester City Mission for many years.

MR. F. COVELL

Mr. Francis Covell, retired solicitor, formerly of Arundel Street, Strand, died on 7th March, aged 80.

SIR ROBERT GOWER

Sir Robert Vaughan Gower, K.C.V.O., O.B.E., solicitor, of Tunbridge Wells, died on 6th March, aged 72. He was admitted in 1903 and became a member of the Royal Tunbridge Wells Corporation in 1909. He was an alderman for nearly thirty years, several times deputy Mayor and from 1917 to 1919 Mayor. He was a Member of Parliament from 1924 to 1925, successively for the Central Division of Hackney and the Gillingham Division of Rochester, and was chairman of the Solicitor-Members' Group. He introduced and piloted through all stages a large number of measures for the welfare of animals and was chairman of the Royal Society for the Prevention of Cruelty to Animals for over twenty years, being elected president in 1951.

MR. J. N. HURRELL

Mr. John Norman Hurrell, solicitor, of Kingsbridge, died on 2nd March, aged 69. He was admitted in 1908.

MR. H. L. JONES

Mr. Humphrey Llewellyn Jones, solicitor, of Mold, died on 8th March, aged 56. Admitted in 1921, he became deputy coroner for Flintshire in 1923 and coroner in 1941. He was clerk to Flint magistrates for twenty years.

MR. W. E. WINDSOR

Mr. Walter Edward Windsor, solicitor, of Tottenham, died on 18th February, aged 89. He was admitted in 1888.

MR. T. P. WRAY

Mr. Thomas Percy Wray, solicitor, of Chesterfield, has died at the age of 72. He was admitted in 1908.

SOCIETIES

The SOLICITORS' ARTICLED CLERKS' SOCIETY are holding a dance at The Law Society's Hall, Chancery Lane, London, W.C.2, at 7 p.m. on Thursday, 19th March. Tickets are obtainable from the Hon. Secretary, S.A.C.S., c/o The Law Society's Hall, address as above. Members 2s. 6d.; non-members 3s. 6d. Dress informal.

CASES REPORTED IN VOL. 97

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